

48

ct
140

THE
ATTORNEY'S
Compleat Guide
IN THE
COURT OF KING'S BENCH.

Dec 24

CONTAINING

The whole Modern PRACTICE of the Court, laid down in a new, familiar, and concise Manner, with Practical Remarks on each Head, illustrated by Cases selected from the best and latest Authorities :

AND ALSO

An Account of the Monies paid out of Pocket on each particular Article of Business at the Publick Offices and Judges Chambers; so as to enable the Young Clerk to prosecute or defend a SUIT from its COMMENCEMENT to JUDGMENT and EXECUTION, through all the different *Minutiæ* of Practice, without further Assistance.

By an ATTORNEY of the Court.

L O N D O N :

Printed by W. STRAHAN and M. WOODFALL,
Law-Printers to His Majesty;

For P. URIEL, in the Inner Temple Lane;
M. FOLINGSBY, and J. WILLIAMS, in Fleet
Street; and G. ROBINSON, in Pater Noster
Row. 1773.

JK
991
ATT

TX

A

Rec. Dec. 29, 1899.

Advertisement.

THE following Sheets were at first composed merely for private Use: The great Advantage the Author has reaped from them in an extensive Practice, is his chief Inducement for offering them to the Public, as a sure Guide whereby the Young Clerk may readily acquire every necessary Information with respect to this Court. Many Inaccuracies may have escaped Notice, notwithstanding the utmost Care and Attention; it is hoped, therefore, the experienced Practitioner will overlook with Candour the Defects that may be found, and all Hints for future Improvements will be gratefully attended to. The Author shall esteem it his greatest Happiness, should it appear

that he has done any Thing, tho' ever
 so trivial, of Service to his Brethren;
 —and whatever may be the Event of
 this Mite thrown into the Public Trea-
 sury, he flatters himself it will be re-
 ceived as the honest Endeavours of a
 Wellwisher to his Profession.

THE

C

T

Atto
 b
 The
 Act
 b
 m
 Affi
 p
 The
 th
 Man
 tin
 th
 tic
 nfar
 fer

T H E
T A B L E
O F

C O N T E N T S.

	PAGE
T HE jurisdiction of the court, — —	1
— Judges and other officers of the court, — — —	3
Attornies and their clerks, how regulated by the several statutes, — — —	5
The terms and their returns, — —	11
Actions, their nature, in what time to be brought, against whom, and when they may be blended, and when not, —	13
Affidavits to hold to bail and for other purposes, — — — — —	18
The leading process to commence suits in this court, — — — — —	37
Manner of entering bill of <i>Middlesex</i> , <i>latitat</i> , on attachment of privilege on the roll, to save the statute of limitations, — — — — —	49
Infants, how they are to prosecute or defend a suit, — — — — —	50

Com-

	PAGE
Common bail and appearance by original, — — — — —	52
Special bail by bill, — — — — —	54
— by original, — — — — —	62
Manner of ruling sheriff to compel a justification, — — — — —	<i>ibid.</i>
Assignment of bail-bond, — — — — —	63
Render, — — — — —	66
Declaration, when and how to be delivered according to the return of process, — — — — —	70
Instructions for drawing declaration and laying <i>venue</i> , — — — — —	77
Precedents of declarations, — — — — —	79
Directions for paying money into court, — — — — —	103
Demanding oyer, — — — — —	104
Pleas general and special, — — — — —	105
Demurrers general and special, — — — — —	114
Directions for making up paper-books, — — — — —	117
Mutual debts, how to be pleaded to, — — — — —	124
Interlocutory judgment and writ of inquiry, — — — — —	126
Summons before a judge, — — — — —	133
Motion, — — — — —	138
Issues, — — — — —	140
Record for trial, — — — — —	146
<i>Venire, distringas, subpœna, and habeas corpus</i> , for a witness when in prison, — — — — —	149
Manner of examining a witness going abroad, on interrogatories, in order to use his evidence at the trial of a cause, — — — — —	153
Evidence, the nature thereof, — — — — —	157
Brief for trial, — — — — —	168
Trial, — — — — —	171
Trial at bar, — — — — —	172
Trial by <i>proviso</i> , and the modern practice under the statute instead of <i>proviso</i> , — — — — —	174
<i>Postea</i> and final judgment, — — — — —	176
Directions for obtaining a new trial, — — — — —	183
Proceedings on a cause being referred by the court, — — — — —	184
	Judge

C O N T E N T S.

vii

		PAGE
	Judgment on <i>non pros</i> , — — —	193
2	— by confession, — — —	195
4	Execution, — — —	199
62	Sheriffs duty on executing process, —	207
	Manner of entering proceedings on roll	
id.	on judgment by verdict or inquiry, —	227
63	<i>Habeas corpus</i> , — — —	233
66	<i>Certiorari</i> and <i>procedendo</i> , — — —	243
	<i>Scire facias</i> to revive judgment, or fix	
70	bail, — — —	245
	Proceedings against prisoners, — —	255
77	Proceedings against peers and members of	
79	parliament, — — —	263
03	Proceedings against attornies clerks in	
104	Chancery, &c. — — —	266
105	Writ of <i>audita querela</i> , and proceedings	
114	thereon, — — —	271
117	Wager of law, — — —	277
124	Outlawry, — — —	279
	Manner of reversing same, — — —	296
126	Putting a person to an outlawry after judg-	
133	ment, — — —	298
138	Proceedings on distress, — — —	299
140	— on replevin, — — —	305
146	Seizement, — — —	319
	Writ of error, — — —	341
149	— error <i>coram nobis residen'</i> —	359
	— error <i>tam in redditione judicii quam</i>	
	<i>in adjudicatione executionis</i> , — —	360
153	— error in parliament, — —	361
157	— error from Ireland, — —	362
168	Costs, — — —	364
171	Directions of writs, &c, — —	371
172		
174		
176		
183		
184		
Judg		

ERRATA:

ERRATA.

Page 11. Line 21. read, and two days, instead of, and one day. Page 62. Line 12. read, a four day rule, instead of, a six day rule. Page 194. Line 19. read, double half crown, instead of, treble penny.

THE

T H E
A T T O R N E Y ' s
C O M P L E A T G U I D E

In the P R A C T I C E of the
C O U R T of K I N G ' s B E N C H .

TH E court of *K. B.* extends over all *Eng-land*, (the king being presumed to sit therein). It is divided into a crown side and plea side. The one determining all criminal matters wherein the king is plaintiff, into which indictments from all inferior courts, orders of sessions, &c. may be removed by *certiorari*. Inquisition of *felo de se*, or *per infortunium interfect.* are certified hither; a *rescous* may be returned by the sheriff, and attachment of contempt issues out of this court, which has the power of examining the delinquent by interrogatories, and committing him on his refusal to answer. Crown side.

All civil actions prosecuted by bill, *latitat*, or original, are cognizable by this court; as all actions upon the case, and all other personal actions, ejectionment, trespass, waste, &c. against any person in the custody of the marshal of the Plea side.
B court,

The Modern Practice of the

court, as every one sued in the King's Bench is supposed to be; and for or against any officer, minister, or clerk of the court, who has the privilege of the same, in respect of his necessary attendance.

This court had no jurisdiction in any action of debt or covenant, unless one of the parties had the privilege of the court, or the defendant was in the custody of the marshal for some trespass or criminal matter, till the 13 *Charles 2.* when a clause was introduced in the bill of *Middlesex*, and writ of *latitat*, called an *ac etiam*, whereby defendant was held to bail in an action wherein otherwise the court had no authority to take bail. *Inst. Cler. page 31.*

The court may also hold plea by original out of Chancery, of all trespasses upon the case, *vi et armis*, replevins, *quare impedit*, but not in debt, detinue, covenant, or account. It examines errors (in fact and in law) from all other courts, the court of Exchequer excepted. It reverses judgments from the King's Bench in *Ireland*. Its own errors (if by original) can only be reversed in the House of Lords; (if by bill) in the Exchequer Chamber. 27 *Eliz.*

This court grants the writ of *habeas corpus* to relieve persons imprisoned, and *habeas cum causa* and *certiorari*, to remove causes from inferior courts. It also issues *mandamus's* and prohibitions to inferior courts, to correct errors in judicial proceedings, and all other errors and misdemeanors tending to the oppression of the subject; can repeal the king's letters patent by *scire facias*; bails in all cases that areailable, and punishes inferior magistrates or officers of justice for abuse of authority.

Lord

Court of King's Bench.

3

Lord Chief Justice MANSFIELD, *Bloomsbury Square.* Judges of the court.

Chambers in *Serjeant's Inn, Chancery Lane.*

Sir RICHARD ASTON, *Bloomsbury Square.*
Chambers in *Serjeant's Inn.*

Mr. Justice WILLES, *Lincoln's Inn Fields.*
Chambers in *Serjeant's Inn.*

Mr. Justice ASHURST, in *Lincoln's Inn,*
New Square.
Chambers in *Serjeant's Inn.*

Attend to do business in term from six to eight o'clock at their chambers in *Serjeant's Inn, Chancery Lane*; and some of them generally attends at chambers in vacation from eleven to one o'clock, if not on the circuit.

As this practice contains only the business of the plea side of the court, no notice is taken of the officers of the crown side; but any attorney wanting business on the crown side, may be informed of the proper officer for executing same, by applying at the crown office in *King's Bench Walks, Temple.*

Chief Clerk, *William Lee, Esq;*

His deputy, *Edward Benton, Esq;*

Assistant, *Mr. Fanshawe.*

Clerk of the Rules, *Mr. Thomas Cooper.*

Clerk of the Papers, *Mr. Benton.*

Clerk of the Dockets, *Geo. Cayley, Esq;*

Clerk of the Declarations, *Mr. Anthony Rymell.*

Clerk of the Common Bails, *Estreats, and Posteas, Mr. Richard Walter.*

Signer of the Writs, *Mr. John Heberdine.*

Officers of
the plea side.

These officers keep their respective offices for business in the King's Bench office, where they attend from nine to twelve in the morning, and from four to six o'clock in the afternoon, in term and vacation, except holidays.

The Modern Practice of the

Signer of the Bills of *Middlesex*, Mr. *Henry Marshall*, at his office in *Clifford's Inn, Fleetstreet*, attends from ten to twelve in the morning, and from four to six o'clock in the afternoon, term or vacation, except holidays.

Clerk of the Treasury and *Custos Brevium*, &c. *Beversham Filmer*, and *Theodore Johnson*, Esqrs.

They or their deputy attend every day in term, when court sits, in Treasury Chamber in *Westminster Hall*, for suitors to inspect records, &c. and also will attend for that purpose when applied to in vacation. They or their clerks give daily attendance at their office in *Holborn Court, Gray's Inn*, and so continue to do from the time judges appoint sitting of *Nisi Prius* and circuits, till the same are over.

Deputy in the Inner and Upper Treasury, Mr. *Faverner Wallis*.

In the Outer Treasury, ditto.

Porter of the Treasury, Mr. *Phillips*.

Clerks of *Nisi Prius*, *Beversham Filmer*, Esq; Mr. *Wallis*, and Mr. *Thomas Whitefield*.

Clerk of the Errors, *John Way*, Esq; office in *Portugal Street* near *Lincoln's Inn*; a clerk attends from nine to two, and from four to eight, term and vacation.

The Seal Office for sealing writs is in *Church Court, Temple*; clerks attend from nine to twelve in the morning, and from three to six o'clock in the afternoon, term or vacation, except holidays.

Clerk of Plea Rolls to the Chief Justice, *John Way*, Esq; *Portugal Street*.

Filacers are Mr. *Adams*, *Pump Court, Temple*, and *Theodore Johnson*, Esq; (Mr. *Adams* executes the business by original in all counties).

Usher and Crier of the Court

Marshal of the King's Bench, *Benjamin Thomas*, Esq;

Deputy

Deputy Marshal

Clerk of the Papers of K. B.

Chaplain of K. B.

Clerk of the Day Rules of K. B.

Two Turnkeys of K. B.

Associate and Marshal for Trials by *Nisi Prius* in London and Middlesex, John Way, Esq; Portugal Street.

Clerk of *Nisi Prius* for Trials in London and Middlesex, Mr. John Minshull, to be heard of at Lord Mansfield's chambers.

Crier of *Nisi Prius* in London and Middlesex, Mr. Woodgate.

There are four Tipstiffs, viz.

Mr. Benjamin Thomas (Lord Mansfield) in Stanhope Street, Clare Market.

Mr. Michael Player (Sir Richard Aston) Lambeth Marsh, Surry.

Mr. John Hill (Mr. Justice Willes) West Harding Street, Fetter Lane.

Mr. Sberfield Holloway (Mr. Justice Ashurst) No. 5. Chancery Lane.

The officers on the circuits are in general appointed by the respective judges; and any attorney applying at such judge's chambers, when the circuits are fixed, may be informed of any matter he may want to know.

Attornies and their Clerks.

ATTORNIES before the *Stat. Westm.* 2. Regulations concerning Attornies. 13 *Ed.* 1. were made by letters patent under the Great Seal; but at present no person can be admitted an attorney, unless he has served a clerkship of five years to an attorney duly admitted, takes the appointed oaths, and be inrolled, after an examination with respect to his abilities by a judge of the court. 2 *Geo.* 2.

Quakers having served a clerkship agreeable to statute, may be inrolled on their affirmation.

12 *Geo.* 2.

The Modern Practice of the

Attornies not inrolled, suing out any writ, forfeit 50 l. for each offence; clerks in the exchequer, chancery, pipe office, &c. attornies of the mayors, sheriffs, and dutchy courts, and officers of the courts at *Westminster* excepted. 2 *Geo.* 2. Made perpetual, 30 *Geo.* 2.

Attornies dismissed by one court for misdemeanors, shall not, after certificate, be admitted to practise in another court. Rule, *Mich.* 1654. *K. B.*

An attorney serving as under-sheriff, or bailiff of sheriff or liberty, shall not practise as an attorney during such employment, under pain of expulsion, and not to be readmitted. *Mich.* 1654. *K. B.*

No clerk of the peace, under-sheriff, &c. to act as solicitor, attorney. or agent, at the sessions where he executes such office, under penalty of 50 l.

Attornies acting as agents for persons not qualified, to be struck off the roll and committed. 22 *Geo.* 2.

No attorney must have more than two articulated clerks at the same time, except the secondary of the court, who may have three clerks; nor permit unqualified persons to issue out writs in his name, on pain of being disabled from practice. 2 *Geo.* 2.

No attorney must take or retain any articulated clerk after quitting business. 22 *Geo.* 2.

An attorney by an authority in writing from an attorney of another court, may sue out writ, prosecute, or defend in such court. 2 *Geo.* 2. Made perpetual, 30 *Geo.* 2.

Attornies incapacitated to be justices of the peace during such time they continue on the roll. 5 *Geo.* 2.

Attornies not liable to serve any parochial or other offices; and if appointed thereto, may bring

Court of King's Bench,

7

bring their writ of privilege to discharge themselves. *Sir.* 1143.

An attorney, if a prisoner, cannot prosecute suits, unless such suit was brought before his imprisonment, but is not disabled from defending suits. 12 *Geo.* 2.

None to act as attornies at sessions, unless admitted according to 2 *Geo.* 2. under penalty of 50 l. with treble costs; and attorney permitting persons not admitted to use his name in the courts of general or quarter sessions, subject to the like penalty: *Lancaster, Durham, Chester*, and dutchy of *Lancaster*, or courts of great sessions in *Wales* excepted. 22 *Geo.* 2.

An attorney admitted in any of the courts at *Westminster*, may practise in any inferior court, unless such court by charter or prescription is restricted to a certain number of attornies, and hath a power to exclude all others. 1 *Vent.* 11. 6 *Geo.* 2. And if denied the privilege of acting, a *mandamus* will lie to restore him. *Raym.* 14.

No attorney to be lessee in ejectment. *Mich.* 1654. *K. B.*

An attorney, it is said, may be bail, if an housekeeper, &c. 8 *Mod.* 338. However, Rule, *Mich.* 14 *Geo.* 2. expressly says, (a general rule), It is ordered, that no attorney of this or any other court, shall be bail in any action or suit depending in this court.

Attorney intitled to privilege while on roll, notwithstanding Rule of *Mich.* 1654. *Lutw.* 1667. *Moor. Cro. Lew. Rast. &c.*

No man can be attorney for both parties, though by their consent, on pain of being struck off the roll. *Faresley* 4.

Attorney struck off roll at his own request, may be restored to his privilege on motion; but shall not avail himself thereof in any suit then pending.

Attornies

Attornies liable to pay costs for blunders in proceedings; and country attornies answerable for the mistakes of their agents.

If attorney dies pending suit, and the party hath notice thereof, and does not appoint another, the other attorney is not obliged to delay suit, so as to hinder his client's interest. *Style's P. Reg.* 13.

If an attorney takes upon him to prosecute or defend a suit without warrant or direction, court will grant an attachment against him. *Rastal*, 582.

The person who files common or special bail, shall be considered as attorney in the cause, till notice given of another. *1 Barnard.* 187.

Attorney undertaking to appear, or subscribing a process, compellable thereto. *6 Mod.* 86. *Salk.* 87. &c.

Attorney can't be changed by his client, without leave of court or order of judge, on payment of his bill, as taxed by master; and the new attorney must, at his peril, take notice of all subsisting rules in the cause. *7 Mod.* 50.

Attorney not to be examined concerning secrets of his client's cause. *Lut.* 49.

Attorney delaying his client's suit, or demanding more than his due, the party aggrieved shall recover costs and treble damages against him, and he shall also be struck off the roll. *3 Jac.* 1.

Attorney justified in detaining writings or money as a security till all his just fees are paid. *1 Salk.* 87.

Attorney may retain monies of executor for business done for testator. *Bar.* 38.

Attorney's bill, tho' paid, may be taxed. *2 Barnard.* 128. And lately,

Attorney must deliver his bill subscribed with his own hand one month before action brought for recovery of the same. *2 Geo.* 2.

Court of King's Bench.

9

An attorney may take out a commission of bankruptcy for his fees, while his bill under taxation by order of court. *Moseley's Rep.* 27.

An action on the case lays for his bill of fees. *Str.* 633.

An attorney may sue by an attachment of privilege.

Attachment of privilege will lie against a member of either university. 3 *Cro.* 180. *Littl. R.* 304.

Attornies punishable by motion and attachment, for disobeying rules of court, forging writs or other matter of record, taking money of client for business not done, endeavouring to impose on the court, or for giving directions to sheriff what persons to return on panel, and other mal-practices, against the obvious rules of justice and honesty. But the court will not proceed against them in this manner, if it appears that the matter complained of was rather owing to neglect or accident than design; or if the party injured has other remedy by act of parliament or action at law.

The court will not oblige an attorney to do any matter by motion, unless it is an official duty as an attorney.

Attornies, if any difference arise between them in ordinary matters of practice, must apply to the master, and submit to his determination, for the court will not be troubled except in nice points of practice.

Articled clerks have no privilege.

Attornies
clerks.

Clerks must actually serve during the whole term of five years, unless the master dies or leaves off business; and then he may be discharged by rule or order of court, and be bound to another inrolled attorney for the remainder of the time. An affidavit must be made, executed, and filed, of such second contract, by one of the subscribing witnesses. 22 *Geo.* 2.

Clerks

Clerks bound to attornies must cause affidavit to be made within three months after the execution of articles of clerkship; the names and places of abode of the parties to be inserted in such affidavit, with the day of the date of the contract, same to be filed with the proper officer in the court where his master is admitted, in a book to be kept for this purpose *. 22 Geo. 2.

* For this affidavit see page

Clerk who gave a consideration, if discharged from master before expiration of his time, may have a proportionate moiety returned, on applying to the court by motion, to have the matter referred to the master; on whose certificate of the sum proper to be refunded, court will order the attorney to pay same. 2 Barnard. 227, &c.

Clerk, before admitted, must by self or his master, make affidavit, that he has actually and really served and been employed by such attorney or attornies to whom bound, or his or their agent or agents, during the said whole term of five years. 22 Geo. 2.

Clerks whose masters died before the expiration of the five years, and before 25th March 1749, and who have served the remainder of the term to an attorney of one of his majesty's courts, though under no article or contract in writing, may be admitted attornies. 22 Geo. 2.

Clerk shewing that he has served five years to a solicitor in chancery, may be admitted an attorney without fee or stamp. 13 Geo. 2.

Clerk serving a prothonotary or secondary of either court five years, may be admitted an attorney. 2 Geo. 2.

A clerk to an attorney who practises also as a scrivener, if by the tenor of his contract, to be instructed in the art of a scrivener only, cannot be admitted an attorney. 2 Geo. 2. Barnes 39.

Having

Court of King's Bench.

11

Having made an affidavit of service, as directed by statute, before a judge or any officer of court authorized to take same, carry the part of your articles signed by your master, with his certificate of your faithful service indorsed thereon, (if he does not accompany you himself), to one of the judges of the court; who examines you with respect to your qualifications; and if approved, gives his *fiat* for admission. Mr. Rymell must attend with you at the judge's chambers to produce the original affidavit of the due execution of the articles. On obtaining judge's *fiat*, give same to Mr. Rymell, who will engross your admission on a treble 40 shillings stamped piece of parchment: You then attend at *Westminster Hall*, some day in term, to be sworn, and have your admission signed by the court: the master will then enter your name on the roll.—The whole expence is about seven guineas.

The T E R M S.

Michaelmas Term contains three weeks and one day, and hath four returns.

It begins on the 6th *November*, if not *Sunday*, otherwise the 7th, and ends on the 28th *November*, if not *Sunday*, then the 29th.

Returns by original.

Returns by bill, writ, &c. Michaelmas

1 On the Morrow of
All Souls.

On next after Term.
the Morrow of *All Souls.*

2 On the Morrow of
St. Martin.

On next after
the Morrow of *St. Martin.*

3 In eight days of *St. Martin.*

On next after
the Octave of *St. Martin.*

4 In fifteen days of *St. Martin.*

On next after
fifteen days from the
day of *St. Martin.*

Writs must not be made returnable in *Michaelmas Term*, on *St. Martin's Day*, but on some other day of the week, according as the Feast of *St. Martin* happens to fall.

Hilary Term contains three weeks and one day, and hath four returns.

It begins the 23d *January*, if not *Sunday*, and then 24th; and ends 12th *February*, if not *Sunday*, and then the 13th.

Hilary
Term.

By original.

By bill, &c.

- | | | | |
|---|--|----|---|
| 1 | In eight days of <i>St. Hilary</i> . | On | next after the Octave of <i>St. Hilary</i> . |
| 2 | In fifteen days of <i>St. Hilary</i> . | On | next after fifteen days from the day of <i>St. Hilary</i> . |
| 3 | On the Morrow of the Purification of the Blessed <i>Mary</i> . | On | next after the Morrow of the Purification of the Blessed Virgin <i>Mary</i> . |
| 4 | On the Octave of the Purification of the Blessed <i>Mary</i> . | On | next after the Octave of the Purification of the Blessed Virgin <i>Mary</i> . |

Writs must not be made returnable on the 2d day of *February* in *Hilary Term*, it not being a court day.

Easter

Easter Term contains three weeks and six days,
and hath five returns.

It begins the *Wednesday* fortnight after *Easter Day*, and ends on *Monday* before *Whitsunday*.

By original.

By bill, &c.

- | | |
|---|---|
| 1 From <i>Easter Day</i> in fifteen days. | On <i>Wednesday</i> next after fifteen days from the day of <i>Easter</i> . |
| 2 From <i>Easter Day</i> in three weeks. | On next after three weeks from the day of <i>Easter</i> . |
| 3 From <i>Easter Day</i> in one month. | On next after one month from the day of <i>Easter</i> . |
| 4 From <i>Easter Day</i> in five weeks. | On next after five weeks from the day of <i>Easter</i> . |
| 5 On the Morrow of the Ascension of our Lord. | On <i>Monday</i> next after the Morrow of the Ascension of our Lord. |

Writs must not be made returnable on the 28th *May* (Ascension Day) in *Easter Term*, it not being a court day.

D

Trinity

Easter

The Modern Practice of the

Trinity Term contains twenty days, and hath four returns.

It begins the *Friday* after *Trinity Sunday*, and ends on the *Wednesday* fortnight after it begins, unless that day happens to be the 24th *June*, and then on the day after.

By original.	By bill, &c.
1 On the Morrow of the Holy Trinity.	On <i>Friday</i> next after the Morrow of the Holy Trinity.
2 On the Octave of the Holy Trinity.	On next after the Octave of the Holy Trinity.
3 From the day of Holy Trinity in fifteen days.	On next after fifteen days from the day of the Holy Trinity.
4 From the day of the Holy Trinity in three weeks.	On <i>Wednesday</i> next after three weeks from the day of the Holy Trinity.

Writs must not be made returnable on the 24th day of *June* (*Midsummer Day*) in *Trinity Term*, it not being a court day; unless it happens to be *Friday* next after *Trinity Sunday*.

Bill

Bill of *Middlesex*, *alias* & *pluries*, *latitat*, *alias* & *pluries*, *distringas*, *habeas corpus*, and all other process thereon before or after judgment, must be returnable at a day certain, viz. any day in term that is *dies juridicus*, if made returnable on the effoin day, the day of the week must be mentioned: as on *Monday* in one month of *St. Michael*. *Scire facias* to hear error, (on writs of error out of the Common Bench, unless there by bill) and in inferior courts, writs of *capias ad satisfaciendum*, *feri facias*, and other judicial writs after judgment affirmed, all process to the outlawry, *retorno habendo*, *capias in withernam*; all writs grounded on any *resale*, *audita querela*, *accedas ad curiam*, *capias si laicus*, or other original out of chancery, must be made returnable *ubicunq'** on a certain return, and not on a particular day of the week. In these writs there must be 15 days, exclusive between teste and return, unless dispensed with by stat. 16 Car. 1. *Gilbert's Practice of K. B.*

Practical remarks on returning writs.

* Or where-soever we shall then be.

ACTIONS.

An action will lie for all injuries done to a man's person, reputation or property, and where a person hath several remedies he may make his election. *Bac. Abr. 1 Inst. 145.*

Actions on the *case*, except for slander; *account*, except concerning merchandize between merchant and merchant; *trespass*, debt, (except on specialty) *detinue*; *trover*, *replevin*, and *trespass quare clausum fregit*, must be brought in six years after cause of action. Assault, menace, battery, wounding, and imprisonment, within

In what cases will lie.

Within what time may be brought.

The Modern Practice of the

four years; and slander in two years: but infants, women under coverture, persons *non compos mentis*, imprisoned or abroad, may sue within the said time, after full age, discovery, sane memory, at large, or returned. *Stat. 21. Jac. 1.*

Where may be brought. Actions must be brought in the proper county for matters local; as debt, on an escape, trespass for spoiling corn, grass, &c. unless cause of action arises where the justices of assize seldom come; but those of a transitory nature may be laid in any county at the discretion of the plaintiff, and are accordingly commonly laid in *London or Middlesex.* Mich. 1654. R. K. B.

In what cases distinct matters may be laid in the same action.

Debt on obligation or *mutuatus*, debt and detain, debt on lease and for clothes, several wrongs and trespasses, several actions on the case, where of the same kind: as an action for fraud on the delivery of goods, and on the warranty of same goods, being both on the contract; against a common carrier on the custom of the realm and trover, being both on the tort. For entering plaintiff's house, breaking his chests, and carrying away his goods, and for beating his servant *per quod servitium amisit*, for a general action of trespass and a special action on the case may be joined. Where one has a right to recover in the same kind of action, though he derives his right from different titles, yet being joined in him, he may recover in the same action; but cannot in the same action join a demand in his own right, and that which he hath in right of another; several persons may join in one action where their interest is joint. Debt and account, debt and trespass, action on a tort and contract, *assumpsit*, and trover may not be laid in the same action. *Bac. Abr.*

Remark.

The courts at *Westminster* will take cognizance of no action where the debt really is under 40s. unless the *damnum* in declaration is laid above that

that sum. Or if a citizen of *London* sues another out of the jurisdiction, and does not recover 40 s. he not only loses his own, but must also pay defendant's costs. 3 *James* 1.

In all actions, real, personal, and mixed, the Appearance; plaintiff or defendant may appear by attorney, except where the party stands in contempt, or his presence is necessary, or in capital cases; though on prosecutions for crimes not capital, the defendant may by favour of the court appear by attorney. In outlawry (except for treason or felony) the defendant may appear and reverse it by attorney.

Those attainted of treason or felony, recusants convicted of præmunire, outlawed or excommunicated alien enemies, and persons in any of the religious orders of the church of *Rome*, cannot sue though they may be sued; but executors or administrators, though outlawed, may sue in right of the deceased. A married woman cannot sue, or be sued without her husband, who is to appoint an attorney for her, except in *London*, where by custom she may, as a sole trader, or in the spiritual court. 6 *Mod.* 86. *Strange* 576.

Persons disabled to sue;

Infants may sue by *prochein ami*, or next friend or guardian, not by attorney; but must always defend by guardian. *Strange* 304.

Infants, their method of suing and defending suits.

Where two executors, and one under age, they may sue, but cannot be sued, by attorney. 2 *Cro.* 420.

An idiot cannot sue, defend, or appear, by attorney, next friend, or guardian, but must appear in person; though a lunatick may appear by guardian if a minor, or by attorney if of full age. *Co. Lit.* 135.

Idiots.

A F F I D A V I T S.

Belief of a debt not sufficient; the statute requires a positive oath. *Str.* 1226. 2 *Bur.* 654.

An old affidavit not sufficient to hold to bail. Act requires oath of a subsisting debt at the time of suing out process. *Strange* 1157, 1270.

Nota, Act of 12 *Geo.* 1. requiring affidavit of 10 l. due, does not supersede the 11 *W.* 3. that requires affidavit of 20 l. in counties palatine. *Strange* 1102.

Practical remarks.

Affidavit to hold to special bail must be positive, though made by an executor, or a third person. 2 *Burrow* 654. 2 *Str.* 1219.

Affidavit that defendants are indebted jointly, not sufficient to hold them to bail severally.

Assignees of a bankrupt must swear positively as well as other plaintiffs. 2 *Barnard.* 284.

Affidavits to hold defendant to bail before process sued out, or on affidavit of service of process where common appearance required made before plaintiff's attorney, being a commissioner, may be used for the purpose aforesaid. *R. K. B. Easter* 15 *Geo.* 2.

Matter of bail is examinable by court, or by judge at chambers on summons.

If cause of action amounts to 10 l. or upwards, affidavit must be made and filed. *Vid. stat.* 12 *G.* 1. 5 *Geo.* 2. 21 *Geo.* 2.

Rule Mich.
15. Car. 2.
by this rule
plaintiff's
true place of
abode and
addition
must be set
forth in af-
fidavit,

K. B.

A. B. plaintiff.

C. D. defendant.

A. B. of the *Strand*, in the county of *Middlesex*, taylor, the plaintiff in this cause maketh oath, that the above defendant is justly and truly indebted to him, this deponent, in the sum of 50 l. for work done, and materials found and provided by this deponent for the said defendant.

A. B.
Sworn

Sworn at the Bill of Mid-
dlesex office, or King's
Bench office, [as the case
may be] this Nov.
1772, before

Saworn at (name the place) the day of
1772, before a commissioner.

before a
commissioner.

For goods sold and delivered by this deponent to the said defendant, (if for one thing only, as a horse, &c. mention it).

If for goods
sold and de-
livered.

If there are several plaintiffs, one only need make the affidavit, viz. Indebted to him this deponent, and C. D. &c. in the sum of 50 l. for goods sold and delivered by him this deponent, and the said C. D. &c. to the said defendant.

Where se-
veral plain-
tiffs.

For so much money lent and advanced by this deponent to the said defendant.

Money lent
and ad-
vanced.

For so much money had and received by the said defendant for the use of this deponent.

Money had
and received.

For so much money of the said deponent's, for the said defendant at his request, paid, laid out, and expended.

Money laid
out.

For so much money due to this deponent upon the balance of an account stated and settled between this deponent and the said defendant.

Stated ac-
count.

For meat, drink, washing, and lodging found and provided by this deponent for the said defendant.

Things
found and
provided.

For divers journeys performed by this deponent by himself and servants (as the case may be) for the said defendant, at his request, and for horsehire and other necessary expences laid out, expended, and paid in and about such journeys.

For jour-
neys, horses
hire, &c.

For fees, work, and labour, money laid out, journeys, and attendances of this deponent in and about prosecuting and defending divers suits and actions, and for drawing and ingrossing

For fees, &c.

The Modern Practice of the

sing divers deeds and writings, and money laid out in and about the same for the said defendant.

If by an executor or administrator of an attorney. Indebted to this deponent as executor (*or executrix*) of the last will and testament (*or as administrator or administratrix*) of all and singular the goods and chattels which were of C. D. gent. deceased, for fees, &c.

Grazing cattle. For grazing, feeding, or depasturing the cattle of the said defendant from to last.

Hire of milch cows. For the milk, use, and produce of milch cows by the said defendant had and received of this deponent, or for hire of milch cows.

For medicines. For divers medicines and other things, in his business of an apothecary, by this deponent found, provided, administered, and given to the said defendant, or by his order, to (*his wife, child, servant, or lodger, as the case may be*) at his request. Add, if necessary, for goods sold, money laid out, journies and attendances, &c.

For surgery. For work and labour, skill and diligence, in and about curing a wound (*as the case is*) of the said defendant, and for divers necessary things used by this deponent in his business of a surgeon, in and about the cure of the said defendant.

On a bond. For principal and interest due on a bond entered into by the said C. D. (*and others, as the case is, jointly and severally, if so*) unto this deponent in the penal sum of l. &c.

Note. That the above defendant is justly and truly indebted to this deponent, in the sum of 50 l. on a promissory note, under the hand of the said defendant, payable to this deponent or order on demand, (*or as the case may be*).

As indorsee. That the said defendant is justly and truly indebted unto him this deponent in the sum of 50 l. as indorsee of one C. D. of a promissory note drawn by the said defendant, and payable to

Court of King's Bench.

21

to the said C. D. or order, &c. and by him indorser to this deponent.

If by a second indorsee against drawer, or indorsee against first, second, or third indorser, vary it *mutatis mutandis*.

That defendant is justly and truly indebted unto this deponent in the sum of 100 l. upon an inland (or foreign) bill of exchange drawn by one J. G. upon the said defendant, payable to this deponent, or order, on a day now past, and accepted by the said defendant. Bill of exchange.

That defendant is justly and truly indebted to this deponent in the sum of 100 l. as indorsee of one K. L. of a bill of exchange drawn by one E. F. upon the said defendant, payable to the said K. L. at a day now past, and accepted by the said defendant. As indorsee.

If against the first, second, or third indorser, vary same *mutatis mutandis*.

Indebted unto this deponent for a year's rent of a house situate, &c. (land, &c. held by lease) in the sum of 20 l. due to this deponent at Ladyday (or as the case may be) last past. House on parol agreement.

For the use and occupation of a house, &c. in 20 l. from to last. House or land by lease.

Indebted unto this deponent in the sum of 20 l. which the said defendant promised to pay to this deponent, upon an exchange lately made of a certain mare belonging to this deponent, for a certain horse of the said defendant's. Barter.

A. B. &c. (being one of the people called Quakers) solemnly affirms, that, &c. is indebted to this affirmant, &c. (as the cause of action may be, always saying affirmant instead of deponent). Affirmed at, &c. (as before). Quaker's affirmation.

A. B. of, &c. maketh oath, That on Thursday the 24th day of June last past, he, this deponent, going to view whether the tithe hay on the Form of affidavit to obtain special ac etiam.

The Modern Practice of the

the lands of *C. D.* of *W.* were ready to be set forth, the said *C. D.* did then in the said field, without any reasonable cause, in a violent manner assault, beat and throw this deponent on the ground; this deponent making no opposition or resistance against the said *C. D.* but this deponent being rescued by some persons present from the said *D.* the said *D.* did again, as soon as he got loose from the persons that rescued this deponent, a second time assault, throw down, beat, and kick this deponent several times about the head and body, so that blood gushed out of his ears, which occasioned this deponent the loss of his speech and hearing for some time, as to render him incapable of performing his duty in the aforesaid parish, he being minister of same: And this deponent further saith, that he the said *D.* hath often declared, that it was no crime for any man to kill or destroy this deponent.

Sworn, &c.

A. B.

This affidavit hath every circumstance of aggravation that can be conceived under the nature of the case. It must be sworn before a judge of the court you intend to commence your suit in. When sworn, must be left with his clerk for an order for bail.

You call on judge's clerk to know if order for bail made on affidavit; if done, it is in manner following indorsed on affidavit, *viz.*

Let bill of *Middlesex* or *latitat* (as the case may be) issued forth for *C. D.* with an *ac etiam* of 20 l. at the suit of *A. B.* upon this affidavit.

Dated, &c.

M.

You make your *ac etiam* accordingly; as set under head of writs. Carry affidavit and writ to proper officer, who signs same, as in a common case.

Judges

Judges are unwilling to deprive a person of liberty; but in the following cases it hath been usual for them to make an order for bail.

In what cases it is usual for judges to make an order for bail.

In battery, conspiracy, or false imprisonment, no bail, of course, without special motion, or order of judge.

If a judge orders special bail, on affidavit made by plaintiff for that purpose; defendant has a right to apply to court, or judge on summons, to get discharged therefrom, if not well founded. *Barnes* 48.

On action for *crim. con.* with plaintiff's wife, on affidavit of fact, a judge will grant an order to hold defendant to bail, for such sum as he shall think reasonable, on the circumstances of the case and parties.

K. B.

A. D. Plaintiff.

C. D. Defendant.

Affidavit of service of process. It must be full and explicit. *Barnes*, p. 405.

J. C. clerk to *John Alexander*, of the city of London, Gent. maketh oath, That he, this deponent, did, on the 4th day of *November* last, personally serve the above defendant with a true copy of a bill of *Middlesex*, *latitat*, *alias*, or *pluries* of either (*as the case may be*) which appears to this deponent to have been regularly issued out of this honourable court against the said defendant, and others if so) at the suit of the above plaintiff, returnable on (*the return of the writ*) under which said copy was written a notice to the defendant of the intent of such service, pursuant to the act in that case made and provided.

A. B.

Sworn at the King's Bench }
Office in the Temple, 10th }
Dec. 1771, before R. W. }

This affidavit is made when plaintiff files common bail for defendant, according to the statute.

K. B.

The Modern Practice of the

K. B.

A. B. Plaintiff.

C. D. Defendant.

Affidavit of
taking bail
in the coun-
try by com-
mission.

J. C. of Taunton, in the county of Somerset, Gent. maketh oath, That the recognizance of bail or bail piece hereunto annexed, was duly acknowledged by A. B. and C. D. the bail, with their additions, before E. F. the commissioner, who took the same in this deponent's presence, the day of last past.

Sworn, &c.

J. C.

Affidavit of
bail in per-
fecting
themselves.

A. B. of, &c. and C. B. of, &c. bail for the defendant in this cause, severally maketh oath, that they, these deponents, are house-keepers in Taunton aforesaid; and that they are each of them worth the sum of (*twice the debt sworn to*) and upwards, exclusive of all debts or demands due from them to any person or persons whatsoever.

Sworn, &c.

A. B. C. B.

To change
the venue.

C. D. of, &c. the defendant in this cause maketh oath, That the cause of action mentioned in the declaration delivered in this cause (if any such there be) did arise in the county of W. and not in the city of L. nor elsewhere out of the said county of W.

Sworn, &c.

C. D.

K. B.

A. B. plaintiff.

C. D. defendant.

Affidavit of
the truth of
a dilatory
plea, or plea
in abate-
ment.

C. D. of, &c. the defendant in this cause maketh oath, That the substance and matter of fact in the plea hereto annexed is true.

Sworn, &c.

C. D.

Remark.

If plea be for a filacer or other officer of the court, there need not be affidavit. A copy of grant of the office is to be affixed to his plea.

1 Inst. c. 8. 270.—7th Edit.

J.

In the *K. B.**A. B.*
against
J. W.

J. W. of, &c. the defendant in this cause maketh oath, That *S. B.* formerly a servant to this deponent, (or as the case may be) is a material witness in order to put off a trial; and that he, this deponent, cannot safely proceed to trial in this cause without his testimony: And this deponent further saith, that the said *S. S.* now is, and for about ten months last past, hath been in the county of *L.* as this deponent is informed, and verily believes; but in what part of *L.* he is, this deponent does not know, nor can discover, altho' he hath done his utmost endeavour to find out where he is, in order to have him served with a *subpœna* to testify in this cause; but this deponent saith, that he is informed by *J. S.* (brother of the said *S. S.*) that he the said *S. S.* will be in *London* in six weeks time; and this deponent verily believes that such information is true, and that he will be in *London* by that time.

Sworn, &c.

*J. W.*In the *K. B.**C. D.* plaintiff,
against
A. B. defendant.

A. B. of, &c. the defendant in this cause, and *C. D.* clerk to Mr. *G.* the said defendant's attorney, severally make oath; and first, the said deponent *A. B.* for himself, saith, that the plaintiff in this cause having given notice of trial for *Thursday* last at *Guildhall, London*, he, this deponent, prepared for his defence, and caused counsel to be see'd, and witnesses to be served with *subpœna's* to give evidence for this defendant upon the said trial: And this deponent further saith, the said plaintiff, on the same day, but not sooner, countermanded his said notice of trial: And this deponent for himself, saith, that he did

Affidavit of
want of a
material wit-
ness in order
to put off a
trial.Affidavit of
defendant
and attor-
ney's clerk
for costs for
plaintiff's
not going to
trial accord-
ing to notice
in a town
cause.

† D

this

The Modern Practice of the

this day serve on Mr. T. the plaintiff's attorney in this cause, a notice in writing, by leaving same at his house with his servant maid, purporting, that this honourable court would be moved on *Monday* next, or so soon after as counsel could be heard, that the plaintiff may pay the defendant his costs for not proceeding to the trial of this cause, pursuant to the notice given by him for that purpose.

A. B.

Sworn, &c.

C. D.

In the K. B.

A. B.

against

C. D.

Affidavit of
defendant
and attorney
for costs for
plaintiff's
not proceeding
to trial
according to
notice in a
country
cause.

C. D. of, &c. the defendant in this cause, and J. E. of, &c. attorney for the said defendant, severally make oath as follows; and first, the said C. D. for himself, saith, That pursuant to a notice of trial given by the plaintiff in this cause, for the last assizes held at T. in the said county, (*or as the case may be*) he, this deponent, and the said J. E. together with (*number*) witnesses which this deponent believes were material, and necessary in this cause, to wit, (*here set forth the witnesses names, places of abode, and additions*), attended at the said assizes; and that all the said witnesses took a journey from their respective habitations to T. aforesaid, being upwards of (*number of*) miles; but these deponents severally say, that the said plaintiff did not proceed to trial pursuant to the said notice; neither have they, or either of them, directly or indirectly, received any countermand of the same; and that these deponents, and the said witnesses, were on that account from home (*number of*) days: And the said C. D. for himself, further says, that he hath paid for horse-hire, and other necessary expences of himself, his said attorney, and the said witnesses on their said journies at the said assizes, the sum of (*l.*) And the other deponent, J. E. for himself

saith,

saith, that he paid (l.) fees of court council,
 &c. (as the case is). C. D.
 Sworn, &c. J. E.

If countermand be received too late, (then add
 to former affidavit) that neither they, or either of
 them, these deponents, directly or indirectly,
 received any countermand of trial of the said
 cause, till the (here insert day and hour you re-
 ceived countermand).

It must be by motion for costs in this court.
 Inst. C. P. 100.

In the K. B.

A. B.
 against
 C. D.

C. D. of, &c. the defendant in this cause, Affidavit for
 and J. E. of, &c. his attorney, severally make increase of
 oath as follows; and first, the said C. D. for costs in a
 himself, saith, That pursuant to notice of trial country
 given in this cause, for the last assizes held at T. cause.
 in the said county, (or as the case may be) he,
 this deponent, and the said J. E. together with
 (number of) witnesses, which this deponent be-
 lieves were material and necessary in this cause,
 to wit, (here name witnesses places of abode and
 additions) attended at the said assizes; and that
 all the said witnesses took a journey from their
 respective habitations to T. aforesaid, being up-
 wards of (number of) miles; and that this
 cause was tried on (here insert day of the
 week, month, and between the hours of the day
 same was tried): And that these deponents, and
 the said witnesses, were, on that account, from
 home (number of) days; and this deponent hath
 expended for horse hire and other necessary ex-
 pences of himself, his said attorney, and the said
 witnesses, on their said journies at the said assizes,
 the sum of (l.) And this deponent, J. E.
 for himself, saith, that he paid (l.) for
 court fees, or to council, &c. (as the case is).
 Sworn, &c.

C. D.
 J. E.
 K.

The Modern Practice of the

K. B.

A.
against
B.Affidavit of
notice of
render of
bail, in order
to discharge
same.

J. B. clerk to J. A. of, &c. gentleman,
attorney for defendant's bail in this cause,
maketh oath, That he, this deponent, did on
Thursday the day of last, serve
Mr. P. (*his man or maid servant, as the case
may be*) who acts as attorney or agent for the
plaintiff in this cause, with a notice in writing,
purporting, that the above defendant rendered
himself (*or was rendered by his bail, as the case
may be*) on the day of last,
before (*the judge before whom render was made*)
in discharge of his bail in this cause.

Sworn, &c.

J. B.

K. B.

A.
against
B.Affidavit of
notice of
bail where
not excepted
against, in
order to file
same, to be
indorsed on
back of bail
piece.

J. B. clerk to J. A. of, &c. maketh oath,
That he, this deponent, did on day of
 last, serve Mr. P. the plaintiff's attor-
ney in this cause, with a notice in writing, pur-
porting, that the within named bail were put
in for the above defendant in this cause, on the
 day of before (*the judge bail
was put in with*).

Sworn, &c.

J. B.

In the K. B.

Between { A. B. plaintiff.
C. D. defendant.Affidavit of
an infant,
and his guar-
dians signing
the petition
and consent
at foot of
same.

G. H. of, &c. gentleman, maketh oath,
That A. B. an infant, the petitioner, in
the petition hereunto annexed named, on
this present day of did duly sign
the petition hereunto annexed, in his this depo-
nent's presence; and this deponent further
saith, at the same time he was present, and did
see E. F. the person mentioned in the said pe-
tition,

tion, duly sign the acceptance or agreement there underwritten, in order to his being a guarantian to the said *A. B.*

Sworn, &c.

G. H.

*A. B. and C. D. assignees } Plaintiff.
of E. F. a bankrupt, }*

and

G. H. Defendant.

E. F. of, &c. the bankrupt, maketh oath, That the above defendant is justly and truly indebted unto the said plaintiffs A. B. and C. D. as assignees of the estate and effects of him this deponent, in the sum of (l.) being the balance of an account for goods sold and delivered (or as the case is) to the said defendant, by this deponent, before he became a bankrupt.

Affidavit by bankrupt on behalf of his assignees.

Sworn, &c.

E. F.

A. B. of, &c. the plaintiff in this cause, maketh oath, That the above defendant justly owes to him this deponent, the sum of (l.) for half a year's rent (or as the case is) of one messuage, situate () now in the possession of the said defendant, as tenant thereof, (or as the case is) due to this deponent at Ladyday last, and that no sufficient distress can be had or found on the premises to satisfy the said rent; and further, that he, this deponent, hath right and power by law to re-enter on the said messuage, upon non-payment of the rent aforesaid.

Affidavit of rent due from tenant, where no distress, in order to recover in ejectment.

Sworn, &c.

A. B.

G. lessee of J. B. against N. N.

J. D. of, &c. maketh oath, That he, this deponent, did this day of by the direction of N. B. landlord of the premises in question in this cause, apply to G. B. tenant in possession of the said premises, to know whether he the said G. B. would appear and become

Affidavit of tenant's refusing to defend an ejectment, in order to have the landlord admitted defendant.

D 3

defendant

The Modern Practice of the

defendant in this cause, or would permit the said *N. B.* to defend his title to the premises in the name of the said *G. B.* and this deponent at the same time shewed, and offered to deliver unto the said *G. B.* a note under-signed by the said *N. B.* whereby the said *N. B.* promised to defend and keep the said *G. B.* harmless from all costs and charges in this cause; but the said *G. B.* then told this deponent, that he would not appear and become defendant in this cause, or anywise concern himself therein.

Sworn, &c.

J. D.

K. B.

A. B. plaintiff,
and

C. D. defendant.

Affidavit of
notice of a
mistake to
amend a de-
claration.

A. B. of, &c. the plaintiff in this cause, maketh oath, That he, this deponent, did on *Thursday* the day of last, being before the escoin day of this present *Hilary* term, leave a notice in writing with Mr. *C. B.* attorney for the defendant in this cause, of a mistake in the declaration delivered in this cause, in order to its amendment, and that the defendant might be apprised and have notice of such amendment, and plead accordingly.

Sworn, &c.

A. B.

K. B.

A. B. plaintiff,
and

C. D. defendant.

Affidavit of
countermand
of notice of
trial.

E. F. of, &c. attorney for the plaintiff in this cause, maketh oath, That he, this deponent, did on *Tuesday* the day of last, three days (*or as the case is*) before the commission day for the assizes held at countermand the notice of trial given in this cause, by serving the defendant with a notice in writing, whereby he, this deponent, made known

to

to the said defendant, that the said plaintiff would not proceed to trial therein at the said assizes.

Sworn, &c.

E. F.

K. B.

A. B. plaintiff.

C. D. defendant.

C. D. of, &c. the defendant in this cause, maketh oath, That the writ of inquiry lately executed by the plaintiff in this cause, at (place where) was executed without any notice given to him, this deponent, of the time and place appointed for the executing thereof.

Affidavit that no notice was given of executing a writ of inquiry in order to set it aside.

Sworn, &c.

C. D.

This affidavit may be made jointly by defendant and his attorney.

K. B.

A. B. plaintiff,

and

C. D. defendant.

E. F. of, &c. attorney for the defendant in this cause, maketh oath, That the writ of inquiry executed by the plaintiff in this cause, on Thursday the day of last, was executed without notice given thereof to him, this deponent, or any other person on his account.

Affidavit of defendant's attorney in support of last affidavit.

Sworn, &c,

E. F.

K. B.

A. B. plaintiff.

and

C. D. defendant.

C. D. of, &c. the defendant in this cause, maketh oath, That he, this deponent, on Thursday the day of last, personally served A. B. the plaintiff in this cause, with a true copy of the rule and master's *allocatur* hereto annexed; and at the same time shewed him the original rule and *allocatur*, and demanded of him the money mentioned in the same; but the said plaintiff refused or neglected (as the case may be) to pay the same.

Affidavit of serving rule, and demanding costs, in order to obtain an attachment by defendant.

Sworn, &c.

C. D.

If

The Modern Practice of the

If defendant deposes any one by power of attorney, then as follows :

E. F. of, &c. maketh oath, That he (*as above*) — (*then go on*) and also shewed him a letter of attorney from the said defendant, authorizing him, this deponent, to receive the same ; but the said plaintiff refused (*or neglected, as the case may be*) to pay the same.

Sworn, &c.

E. F.

K. B.

A. B. plaintiff,
and

C. D. defendant.

Affidavit to support motion in arrest of judgment, for a new trial,

C. D. of, &c. the defendant in this cause, maketh oath, That he, this deponent, had no notice of trial in this cause, for the last assizes held for the county of *N.* but that the same was tried without any notice given thereof to him this deponent.

Sworn, &c.

C. D.

K. B.

A. B. plaintiff,
and

C. D. defendant.

Affidavit when record differs from deed pleaded.

C. D. of, &c. the defendant in this cause, maketh oath, That the record whereon this cause was tried at the last assizes for *N.* differs from the deed pleaded on the trial of this cause; for in the record thereof, the deed is mentioned to bear date, &c. and to be made between, &c. and the deed is dated on, &c. and made between, &c. (*or as the case is*).

Sworn, &c.

C. D.

K. B.

A. B. plaintiff,
and

C. D. defendant.

When there is a defect in pleading.

E. F. of, &c. attorney for the defendant in this cause, maketh oath, That the counsel for the plaintiff in this cause, pleaded, &c. (*the matter*)

matter

matter pleaded) when they should have pleaded (the matter that ought to have been pleaded) or before the defendant pleaded his plea of not guilty, contrary to the custom and practice of this court.

Sworn, &c.

E. F.

K. B.

A. B. plaintiff,

and

C. D. defendant.

A. B. of, &c. gentleman, attorney for the defendant in this cause, maketh oath, That issue was joined in this cause, as of (the term) last; and that the plaintiff did not proceed to trial at the then next assizes, &c. to be held for the county of N. and that he, this deponent, on Thursday the day of inst. gave notice in writing to Mr. A. B. attorney for the plaintiff in this cause, that this honourable court 14 Geo. 2. would be moved to-morrow, or so soon after as counsel could be heard for judgment, as in case of a nonsuit, pursuant to the statute in that case made and provided.

Affidavit for judgment (as in case of a nonsuit) for not proceeding to trial after issue joined.

Sworn, &c.

A. B.

Holdfast on the demise of A. B.

against

Letgoe.

B. R. of Grocers Hall, London, gent. maketh oath, that he this deponent did on the day of last, serve C. D. the tenant in possession of the premises in question in this cause, with the declaration hereunto annexed, and the notice thereunder written by delivering unto him the said C. D. a true copy of the said declaration and notice, and at the same time reading over to him the said notice, and acquainting him with the contents or purport of the said declaration and notice.

Affidavit of service of declaration in ejectment,

Sworn, &c.

B. R.

In

A. B. plaintiff,
and
C. D. defendant.

In the K. B. Between

Form of the
affidavit to
enter up
judgment on
bond and
warrant of
attorney of
above a
year's stand-
ing.

E. F. of, &c. and G. H. of, &c. severally make oath; and first, the said E. F. for himself saith, that the sum 1. secured to be paid unto him this deponent, in and by one bond or obligation in the penal sum of 1. bearing date the day of in the year of our Lord entered into by the said defendant C. D. unto him this deponent (and for which this deponent hath a warrant of attorney executed by the said defendant) bearing even date with the said bond to confess judgment thereon in this honourable court, is still due and owing unto him this deponent: and this deponent further saith, that the aforesaid C. D. is now alive, as this deponent verily believes, he this deponent having seen and discoursed with the said defendant on the day of instant: and the said other deponent G. H. for himself saith, that he was present and did see the said defendant C. D. duly execute the said bond and warrant of attorney above mentioned: and further saith, that the name of G. H. subscribed as a witness to the same bond and warrant of attorney aforesaid, is of this deponent's own proper handwriting.

E. F.
G. H.

Sworn, &c.

On this affidavit judge makes an order for entering up judgment, for which you pay his clerk 2s. carry order to Mr. Caley, and he signs judgment on old bond and warrant, and files order as his voucher for so doing.

Affidavit of
the execution
of articles of
clerkship.

A. B. clerk to R. R. of, &c. gent. maketh oath, that he this deponent did see R. R. one of the attorney's of his majesty's court of King's Bench, R. T. of, &c. and P. R. (the clerk) severally sign, seal, and as their several acts and deeds, in due form of law deliver certain articles

Articles of agreement indented, bearing date the day of last, and made between the said R. T. and P. R. of the one part; and the said R. R. of the other part; whereby the said R. T. and P. R. agreed, that the said P. R. should serve the said R. R. as his clerk in the practice of an attorney and solicitor for the term of five years, to be computed from the day of the date of the said articles: and this deponent further saith, that the names R. T. P. R. and R. R. set and subscribed opposite to the several seals affixed to the said articles as the parties executing the same, are of the several and respective proper handwritings of the said R. T. P. R. and R. R. and that the name W. L. thereto set, as one of the subscribing witnesses to the said articles, is the proper handwriting of the said W. L. and that the name A. B. thereunto set as the other subscribing witness, is the proper handwriting of this deponent.

Sworn, &c.

A. B.

Note, This affidavit must be filed and entered with Mr. Benton, in the King's Bench office, within three months after date of articles, as directed by statute 22 Geo. 2. his fee for filing same is 2 s. 6 d. and the book may be searched at any time in office hours.

E. F. of, &c. maketh oath, that this deponent did on Thursday the day of last deliver unto the keeper, gaoler, or turnkey of the gaol of a true copy of a declaration hereunto annexed; and the said keeper, gaoler, or turnkey then acknowledged the said defendant to be a prisoner in the said gaol: and this deponent saith, that the said defendant was arrested or charged in custody by virtue of a bill of Middlesex, alias or pluries, latitat, alias or pluries, special capias, alias or pluries attachment of privilege, (or as the case may be) appearing to this deponent to be issued out of this honourable

Affidavit of delivery of declaration against a prisoner.

The Modern Practice of the
nourable court, and returnable before the de-
livery of the said declaration.

Sworn, &c.

E. F.

In the King's Bench,

A. B.
against
C. D.

Affidavit to
authenticate
quæres made
by master
on a bill of
costs taxed.

A. B. of, &c. the plaintiff in this cause, and
T. C. attorney to the said plaintiff, severally
make oath; and first the said A. B. the plain-
tiff, for himself saith, that he paid and ex-
pended for the entertainment of his witnesses
during their attendance for days, to give
evidence in this cause, the sum of and this
deponent further saith, that he paid the several
witnesses following for their necessary attendance
during that time, that is to say, (*here insert
witnesses names and sums paid*) and which said
several persons were, as this deponent also ap-
prehends and was advised, material witnesses
for determining this cause: and the other de-
ponent T. C. for himself, saith, that he this
deponent made out and caused to be delivered
subpæna tickets in this cause, which
were duly served on (*here insert the names of the
persons on whom they were served*) and that in
pursuance thereof, they all duly attended at
(*the place where cause tried*) for days, in or-
der to give evidence for plaintiff in this cause,
until the said cause was referred to arbitration
by order of court: and this deponent T. C. fur-
ther saith, that he, this deponent, attended at
Guildhall for days, during all which time
the said cause was in the paper of causes for the
trial thereof, and that the same did not come
on for trial till when the same was referred
to arbitration as aforesaid.

Sworn, &c.

A. B.
T. C.

This affidavit must be varied according to
the nature of the case.

All

All the above affidavits are to be wrote on treble sixpenny stamps, and may be sworn before a judge, commissioner, or officer of the court, authorized to take affidavits, viz. *Middlesex*, Mr. Marshall, *Clifford's Inn*, London, or any other county; *Mt. Heberden*, *King's Bench* office; pay for swearing same 1 s.

Leading process to commence suits.

No writ, with a clause of *ac etiam billæ*, can Observa-
be made out against an heir, executor, or tions.
adminitrator, nor in any case whatsoever, where,
by the rules of the court, special bail ought
not to be taken, nor upon any bond or penal
bill where the principal and interest is not 10 l.
but the court, or a judge, at chambers, may
and do, on good cause shewn by affidavit, make
an order for bail in an action of assault and
battery, or for words, or *scandalum magnatum*,
or for any personal wrong. Rule *Mich.* 1654.
Gilbert Hist. K. B.

Four defendants may be inserted in each writ.

The writ must express the defendant by his
name of baptism and surname; and if more per-
sons of the same name, a proper distinction should
be made as elder or younger, &c.

Where plaintiff is an executor, admini-
strator, assignee of a bail-bond, or sues on a pe-
nal statute, it is not necessary to describe him
as such in the writ, but to answer *A. B.* in a
plea of trespass is sufficient. *Strange* 1232.

Latitat may be tested before cause of action
arose, but defendant must not be arrested there-
on till money due. 1 *Vent.* 28.

If original bears teste before cause of action
arose, it is abateable. 2 *Bur. Rep.* 967.

Peers, spiritual and temporal, members of the *Persona pri-*
vileged from
house of commons, foreign ambassadors and
their arrest.

E

their

arrest.

The Modern Practice of the

their menial servants, the king's servants, except leave obtained from the lord chamberlain, attornies, executors, and administrators, unless on a *devastavit* returned, infants and married women, cannot be held to bail.

Sailors and
Soldiers.

Nor can sailors on board any of his majesty's ships of war be arrested for a less sum than 20l. nor soldiers unless the original cause of action amounts to 10l. or for some criminal matter, but may be surrendered in discharge of bail; volunteers are not privileged from arrests. 29 & 30 Geo. 2. *Bur. Rep.* 339, 446.

Form of a
bill of Mid-
dlesex.

Middlesex, to wit, The sheriff is commanded to take *A. B.* (*here insert John Doe or Richard Roe if but one real defendant, varying the fictitious defendant's christian name from the real defendant's christian name*) if they be found in his bailiwick, and that he keep them safely so that he may have their bodies before the lord the king at *Westminster*, on (*here insert any return you choose to make your writ of*) to answer *C. D.* in a plea of trespass, and that he have there then this precept.

By bill. *Lee.*

Notice.

Mr. *C. D.* you are served with this process to the intent that you may by your attorney appear (*if against man and wife, say, for yourself and Mary your wife, or as her christian name may be*) in his majesty's court of *King's Bench*, at the return thereof, being the (*the day of month and year of return, unless same month, and then instant sufficient*) in order to your defence in this action.

Remark.

Trespass is sufficient in this court on all process where bail not required, except against bail on recognizance after judgment against defendant, when the following *ac etiam* must be inserted whetherailable or not, after the word *trespass*.

And also to the bill of the said *A.* to be exhibited against the said *B.* in a plea of debt on recognizance, according to the custom of the court of our Lord the King, before the King himself. Ac etiam in debt upon a recognizance of bail.

In all bailable cases an *ac etiam* must be inserted according to the nature of the case, immediately after the word *trespass*, and before the word *and*. Practical remarks.

The writ must have the attorney's name and day, month and year, when sued out, indorsed on the back. *Burr. Rep.* 20.

If bailable, these words are to precede attorney's name, On oath, bail, for (*the sum sworn to*).

The person who is to serve the writ must read over the copy with the original, so as to be able to swear he served a true copy.

The defendant is to be personally served with a copy of all writs issuing out of this court, to enforce an appearance.

When you serve defendant, you read or explain to him the notice at bottom; if he refuses to take same, touch *him* with copy; and it is good service; or if he flies from you, so that you cannot touch him, proclaim your business aloud to him, and it will be deemed sufficient: He is at his peril to take notice of the writ.

Not absolutely necessary to shew writ at time of service of copy. 5 & 12 Geo. 2.

This writ is only signed, for which purpose you make a *precipe* for the office in manner following:

Middlesex, to wit, Bill for *A. B.* against *C. D.* Precipe. If bailable, you score under defendant's name thus, *C. D.* Returnable (*the return of writ*).

Day, month and year,	} If bailable, say, — On	Indorsed on back.

Attorney's name.

E 2

Take

The Modern Practice of the

Take writ and *precipe* to Mr. Marshall, at the bill of *Middlesex* office, in *Clifford's Inn*, who will sign it; pay him in term 6 d. in vacation 10 d. If bailable, he swears your affidavit; pay him 1 s. swearing affidavit. You leave affidavit and *precipe* with him.

If defendant cannot be served before return with common process, or arrested on bailable bill of *Middlesex*, make out an *alias* in form following:

Alias bill.

Middlesex, to wit, The sheriff is commanded, as before he was commanded, to take, &c. (and so on verbatim as in former precedent); only, if bailable, (notice to defendant to appear must be omitted, and an *ac etiam* inserted therein according to the nature of the case.

Precipe.

Middlesex, to wit, *Alias* bill for *A. B.* against *C. D.*

It do: seement.

Returnable (return of alias)
Day, month and year, } Pay signing same term or
attorney's name, and } vacation 2 d.
when bill sued out.

If *alias* not executed, make out *pluries* as follows:

Pluries bill.

Middlesex, to wit, The sheriff is commanded as oftentimes heretofore he hath been commanded, to take, &c. (as in bill of *Middlesex*). If the *alias* or *pluries* are bailable, mention in *precipe* when affidavit sworn, and when first writ taken out.

Precipe for office, same as before, only instead of *alias* bill, say *pluries* bill. Pay signing same, term or vacation, 2 d.

You may continue this writ for four terms and if not executed, then sue out a new bill of

Ma

Court of King's Bench.

41

Middlesex; pay for same in term or vacation as at first.

If defendant lives in any liberty in the county, then make out a *non omittas* bill of *Middlesex*, in form following :

Middlesex, to wit, The sheriff is commanded, *Non omittas* that he do not forbear by reason of any liberty bill. in his county; but that he take (*as before, on a bailable bill, alias or pluries*).

Precipe same as before, only calling it *non omittas* bill for, &c.

Pay signing same, term 6 d. vacation 10 d.

Note, In your *ac etiam* in this court, it is the common practice to make double that sworn to.

Forms of ac etiam to hold defendant to bail on bill of Middlesex.

And also to a bill of the said *A.* to be exhibit-Debt.
ed against the said *C.* for 50*l.* debt, according to the custom of the court of the Lord the King, before the King himself.

And also to a bill of the said *A.* to be exhibit-Promise.
bited against the said *C.* for 50*l.* upon promise. According, &c.

And also to a bill of the said *A.* to be exhibit-Trespass.
hibited against the said *C.* for taking and carrying away the goods and chattels of the said *A.* to his damage of 50*l.* According to, &c.

And also to a bill of the said *A.* to be exhibit-Trover.
bited against the said *C.* for converting and disposing of the goods and chattels of the said *A.* to the value of 50*l.* According, &c.

And also to a bill of the said *A.* to be exhibit-Detinue.
bited against the said *C.* for detaining the goods and chattels of the said *A.* to the value of 50*l.* According, &c.

Covenant.

And also to a bill of the said *A.* to be exhibited against the said *C.* for a breach of covenant, to the damage of the said *A.* of 50 *l.* According, &c.

Debt separately.

And also to a bill of the said *A.* to be exhibited against the said *C.* and *D.* for 50 *l.* debt severally. According, &c.

Note.

The same *ac etiam* against two defendants upon note, say, for 50 *l.* upon promise severally. According, &c.

Ac etiam against several defendants for unequal sums.

Debt and promise.

And also to a bill of the said *A.* to be exhibited against the aforesaid *C.* for 50 *l.* upon promise, and against the aforesaid *D.* for 30 *l.* debt. According, &c.

If in case only against several defendants, say,

Case against several defendants.

And also to a bill of the said *A.* to be exhibited against the aforesaid *C.* for 50 *l.* upon promise, and against the aforesaid *D.* for 30 *l.* upon promise. According, &c.

Ac etiam against several defendants, for several unequal sums.

Debt.

And also to a bill of the said *A.* to be exhibited against the aforesaid *C.* for 10 *l.* debt and against the aforesaid *D.* for 17 *l.* 10 *s.* 8 *d.*

Promise.
Trove.

upon promise; and against the aforesaid *E.* for converting and disposing of the goods and chattels of the said *A.* to the value of 100 *l.* According, &c.

If on judge's order for bail on an assault make your *ac etiam* as follows: (and so vary same as the case may be).

Assault.

And also to a bill of the said *A.* to be exhibited against the said *C.* for beating, bruising

wound

wounding, and ill treating the said *A.* to his damage of 20 l. According, &c.

George the Third, &c. To the sheriff or she-^{Form of a} riffs (as the case may be) of London, (or any^{latitat.} other city or county), Greeting: WHEREAS we lately commanded our sheriff of *Middlesex*, that he should take *C. D.* (if but one defendant follow directions as in bill of *Middlesex*, ante) if they might be found in his bailiwick, and keep them safely, so that he should have their bodies before us at *Westminster*, at a certain day now past, to answer to *A. B.* in a plea of trespass; (if bailable, see ac etiam afterwards; if against bail after judgment against defendant, see directions in bill of *Middlesex*); and our said sheriff of *Middlesex*, at that day returned to us, that the aforesaid (Christian name of real and fictitious defendant; if but one real defendant); if otherwise, (Christian name of all the defendants, unless two alike, then distinguish them by their christian and surname) are not found in his bailiwick; whereupon, on behalf of the said (plaintiff or plaintiffs christian names) it is sufficiently attested in our court, before us, that the aforesaid (defendants christian names as before) do run up and down and secrete themselves in your county: Therefore, we command you, that you take them, if they may be found in your bailiwick, and safely keep them, so that you may have their bodies before us at *Westminster*, (the return you choose to make your writ of) to answer to the aforesaid (plaintiff or plaintiffs) of the plea aforesaid; (if bailable, say of the plea and bill aforesaid); and that you have there then this writ. *Witness* William Lord Mansfield at Westminster. (This is called the teste, and must be the first day of term, if writ sued out in term; if in vacation, the last day of the pre-

The Modern Practice of the
preceding term), in the (year of the King's
reign.)

Lee.

If defendant is to be served with a copy, then fill it up agreeable to notice to bill of *Middlesex*.

Precipe same as to bill of *Middlesex*, only put city or county in the margin, and call it *latitat* instead of bill of *Middlesex*, and indorse it as bill of *Middlesex*, if common or bailable.

Carry writ and *precipe* (if common), and affidavit (if bailable) to Mr. Heberden, in the King's Bench office;—swearing affidavit, 1 s. signing *latitat*, 2 s. 6 d. He keeps affidavit and *precipe*. This writ must be then sealed at the seal office; pay sealing 7 d.

If defendant not served or arrested on *latitat*, make out *alias* as follows:

Form of
alias capias.

George the Third, &c. To the sheriffs of London, (or any other county, as the case may be), Greeting: We command you, as we have before commanded you, that you take *A. B.* (as directed before) if he may be found in your bailiwick, and safely keep him, so that you may have his body before us at *Westminster*, (return) to answer *A. B.* of a plea of trespass; (if bailable, vide ac etiam on *latitat*, as after); and have there then this writ. Witnesses (as before in *latitat*).

Lee.

If common, it must have a notice as in bill of *Middlesex*; if bailable, it must be indorsed as directed on bill of *Middlesex*.

Pluries ca-
pias.

The same *verbatim* as *alias capias*, only instead of the words "as we have before commanded you:" Say, As we have often times heretofore commanded you.—

There must be a *precipe* for office on *alias* and *pluries capias*, as before, only call it *alias* or *pluries capias* (as the case may be) and mark on *precipe* when first writ and affidavit sued out.

These

These writs are signed by Mr. Heberden, for which you pay nothing; sealing 7 d. each.

After first *pluries capias*, plaintiff may continue same by *pluries* for four terms from *latitat* sued out, and if defendant not served or arrested, you must take out a new *latitat*, for which you pay Mr. Heberden, and at seal office; signing and sealing same as at first. Note.

If you want to pursue defendant into any liberty, you must make out *non omittas* in manner following:

George the Third, &c. To the sheriff, &c. Non omittas, *latitatus*. We command you, that you do not forbear, by reason of any liberty in your county, but that you take, &c. (as in *latitat*, varying it as directed under head of bill of Middlesex).

If defendant not served or arrested, you may make out *alias* and *pluries*, and continue same on *pluries non omittas*, as on *pluries latitat*.

There must be a *precipe* for office, according to form in bill of Middlesex, varying same according to the nature of the case: If to be served, it must have a notice; if for bail, an *ac etiam*, as the case requires.

The *non omittas* must be signed by Mr. Heberden. Pay signing 2 s. 6 d. sealing 7 d.

Form of ac etiam on latitat, &c.

And also to a bill of the said A. B. to be exhibited against the said C. D. &c. (for which, see forms according to the nature of the case on *ac etiams on bill of Middlesex*), according to the custom of our court before us.

These writs are on 2 s. stamped parchment, and copies to serve on defendant may be bought at any law stationers.

A writ cannot be sued out in *Michaelmas* Practical *Term* returnable in *Easter*; for in that case *Hi-marks*. *lary Term* would be missed, which is irregular, and cause out of court. 4 *Vin. Abr.* 225.

Bill

The Modern Practice of the

Bill of *Middlesex* can't be returnable same day it issues. 2 Lord Raym. 772.

Latitat not confined to any particular number of days between *teste* and return. One sufficient. 2 *Strange* 917.

The return of a *mandavi ballivo* is now presumed and dispensed with, and a *non omittat* issues without such first writ or return.

All process to be served on defendant may be served on the return day, altho' after rising of the court. 2 *Bur. Rep.* 812.

A *latitat* may be executed in any county palatine, only it must be directed to the proper officer for executing such process. *Vide* Directions to the particular counties and courts at the end of the book.

Latitat may be served in county palatine without chamberlain's *mandate*.

If suit commenced by attorney against common person for fees, &c. it must be by attachment in form following :

Attachment
of privilege.

George the Third, &c. To the sheriff (or sheriffs of L. as the case is) Greeting : We command you, that you attach (*the defendant or defendants*) if he (*or they*) may be found in your bailiwick, and safely keep him (*or them*) so that you may have his (*or their*) body (*or bodies*) before us at *Westminster*, (*the return*) to answer *John Alexander*, gentleman, being one of the attornies of our court, before us, according to the liberties and privileges for such attornies and other ministers of the same court, from time whereof the memory of man is not to the contrary used and approved in the same, of a plea of trespass ; (*if bailable, here insert ac etiam according to nature of case, vide Ac etiams under bill of Middlesex*), &c. and that you have then there this writ. Witness *William Lord Mansfield*

Court of King's Bench.

47

held at Westminster, (same rule as on latitat) in the (year of the King) of our reign.

Lee.

To be ingrossed on a 2 s. piece of stamped parchment.

If to be served on defendant, add notice as in bill of Middlesex, and indorse same as directed hereon.

If defendant not served or arrested, make out new writ.

Precipe for office same as latitat, only instead of latitat, say, Writ of privilege for, &c.

Take writ and precipe (if bailable) and affidavit to Mr. Heberden; pay swearing affidavit 1 s. signing nothing; sealing 7 d. If bailable, you get warrant thereon; if to be served on defendant, serve a copy of same.

This writ may be taken out, returned, and entered on roll, to save statute of limitations.

You pay sheriff in London or Middlesex, for warrants on all these writs, 4 d. each. In other counties the charge differs.

London, to wit, If A. B. shall give you security to prosecute his suit, then put by sureties and safe pledges, A. D. late of London, merchant, to shew that whereas (as in *capias* to the damage of the said A. 30 l.) as he saith.

Precipe for original.

Special *capias* returnable (the return) wheresoever, &c.

Precipe to be wrote on copy paper.

George the Third, &c. To the sheriffs of London, (or wherever defendant is to be taken) greeting: We command you, that you take A. D. late of London, merchant, if he be found in your bailiwick, and safely keep him, so that you may have him before us in (the return) where-

The Modern Practice of the

wheresoever we shall then be in *England*, to answer *A. B.* in a plea that WHEREAS (as in declaration by original, according to the nature of the case to the damage, &c.) as it is said: And have you there this writ. Witness *William Lord Mansfield* at *Westminster*, (the teste of writ) in the 12th year of our reign.

A D A M S.

To be indorsed as directed under bill of *Middlesex*.

This writ must be ingrossed on a double twelve-penny piece of parchment, and that with *precipe* must be carried to Mr. *Adams* in *Pump Court*, who will sign same, and return *capias* immediately. He charges for original and *capias* thus, 5 s. 4 d. for the first count, and 1 s. for every other, and 4 d. for filing original. Where damages are laid in *capias* above 40 l. he takes for the King's fine, according to the following table.

			l.	s.	d.
King's fine.	From 40 l.	to 100 marks	—	—	0 6 8
	100 marks	to 100 l.	—	—	0 10 6
	100 l.	to 200 marks	—	—	0 13 4
	138 l. 6 s. 8 d.	to 166 l. 13 s. 4 d.	0	16	8
	166 l.	13 s. 4 d.	to 200 l.	1	0 0
For every 100 marks more	—	—	0	6	8
For every 100 l. more	—	—	0	10	0
You pay sealing writ 7 d. and sheriff's warrant thereon	—	—	0	2	6

If you chuse to serve defendant with a copy, you add a notice as in bill of *Middlesex*; if to arrest him, get warrant thereon; pay for same, 2 s. 4 d.

If not arrested, &c. on *capias*, you make out *alias* and *pluries*, for which you pay signing same as *capias*, (exclusive of original and King's fine), sealing 7 d.

If defendant does not reside in the city or county you intend to lay your venue in, you must have your *capias* returned by sheriff,

non est inventus to ground *testatum* into county where he lives, or otherwise you will loose your remedy against his bail.

The *testatum capias* only differs from *capias* in reciting same and sheriff's return. You pay for *testatum* the same as at first, except original and King's fine.

An original must not be taken out for a debt under 10*l.* tho' defendant is not held to bail thereon.

Precipe for original must contain declaration, and by statute of additions, set forth defendant's degree, calling, and place, or county where he last resided. *Stat. 1 Hen. 5.*

Directions for suing out and entering up bill of Middlesex latitat, or attachment of privilege, to save statute of limitations:

You must sue out bill of *Middlesex latitat*, or attachment of privilege, as before directed, and get same returned by sheriff *non est inventus*; then enter same on King's Bench Roll, (*pay for rolls 4*d.* each*) in manner following. Pay sheriff 8*d.* returning each writ.

As yet, of Easter Term. Witness
William Lord Mansfield:

Middlesex, to wit, The sheriff is commanded to take *J. P.* and *M. M.* if they be found in his bailiwick, and that he keep them safely, so that he may have their bodies before the Lord the King at *Westminster*, on *Wednesday* next after three weeks from the day of *Easter*, to answer to *T. S.* in a plea of trespass; and that he then have there this precept.—By bill.—*Lee.* At which day, before our Lord the King at *Westminster*, come as well the aforesaid *T.* in his proper person, and offered himself against the said *J.* and *M.* in the plea aforesaid; and the sheriff, namely, *John Wilkes, Esq;* and *Frederick Bull, Esq;* sheriff of *Middlesex* aforesaid, returned that

Manner of
entering bill
of *Middlesex*
on roll.

The Modern Practice of the

the aforesaid *J.* and *M.* are not nor is either of them found in his bailiwick. *Roll.*

If on *latitat*, or attachment of privilege, set them forth with their returns, according to the above precedent, *mutatis mutandis*.

Entry of T. B. Gent. one, &c.

Docket paper.

Middlesex, to wit, Entry of a bill to save the statute, between T. S. plaintiff, and J. P. and M. M. defendants.

Returnable, &c.	<i>Roll.</i>
-----------------	--------------

This must be wrote on a small piece of paper, and with the roll carried to Mr. *Caley*, clerk of the judgments; pay for entering, &c. 4 s. 6d.

Then carry bill of *Middlesex latitat*, or attachment to Mr. *Heberden*, King's Bench office, who files same; pay filing 4 d. each.

All these writs must be continued down on roll till time defendant is served or taken on process, to avail yourself of this procedure.

INFANTS.

*The method in which they must prosecute
or defend suits.*

Observation. Defendant is not obliged to plead to declaration at the suit of an infant, till rule produced, admitting him to declare by *prochein ami* or guardian. Nor need infant present petition for that purpose, till time to declare or plead.

In the *K. B.* Between $\left\{ \begin{array}{l} A. B. \text{ plaintiff.} \\ C. D. \text{ defendant.} \end{array} \right.$

**Form of
petition to
assign an in-
fant a guar-
dian.**

To the Right Honourable WILLIAM Lord
MANSFIELD, Lord Chief Justice of
His Majesty's Court of K. B.

The humble petition of *A. B.* an infant, under the age of twenty-one years, the plaintiff in this cause;

Sheweth,

Court of King's Bench.

51

Sheweth,

That your petitioner has, as he is advised, good cause of action against the defendant C. D. (*here mention cause of action*), and that your petitioner has lately brought his action against the said C. D. in this honourable court for such (*whatever the cause of action is*) but in regard to your petitioner's infancy,

Your petitioner humbly prays your Lordship would be pleased to assign his uncle E. F. as and for your petitioner's guardian, to prosecute his said suit or action against the said defendant C. D.

And your petitioner shall, &c.

A. B.

I do accept and agree to be guardian to the plaintiff A. B. an infant, according to the prayer of the above petition. Witness my hand the day of 1772.

Guardian's consent to be wrote at the bottom of the petition.

E. F.

This petition to be wrote on a sheet of treble expenny stamped paper.

Affidavit must be made of the infant's signing the petition, and also of guardian's consent; for form thereof, see page 28.

London, to wit, It is ordered by the court that E. F. sue for A. B. who is under the age of twenty-one years, as next friend (*or guardian*) of the said A. against C. D. of a plea of (*as the case may be*). Form of rule for admission.

By the court.

The petition must be signed by the Chief Justice of the court where action brought; by signing same 12 s. when done, carry to Mr. Cooper's office, Symmond's Inn, who enters same, and draws up rule for admission; for entering, and rule 5 s. and then carry to judge's clerk, who files it.

F 2

It

The Modern Practice of the

It is no record till filed and entered.

The same steps to be taken to defend a suit
mutatis mutandis.

Form of de-
claration at
suit of an in-
fant.

London, to wit, *A. B.* who is within the age of twenty-one years, by *E. F.* his next friend, hereunto specially admitted by the court of our Lord the King, complains of *C. D.* being in the custody of the marshal, &c. as in common declaration, only using the infant's name instead of the name of the guardian.

Common bail and appearance by original.

Form of
common bail
piece.

Michaelmas Term, 10th George the Third.

Lee.

Middlesex, to wit, *A. B.* (the defendant) having been served with process, is delivered to bail.

T. C. }
Attorney. }

To *John Doe* of London, Gent.
and
Richard Roe of the same place,
Gent.

At the suit of *C. D.* (if but
one plaintiff, if more mention
them).

Mich. 10
Geo. 2.

If filed according to
statute by plain-
tiff's attorney, in-
sert these words,
*Filed according to
the statute.*

R. S. plaintiff's attorney.

This bail piece must be wrote on a treble sixpenny stamped piece of parchment of the above form.

File it with Mr. *Walter*, clerk of the common bails in *King's Bench* office.

If filed in term, writ is returnable, pay him 1 s. 2 d. If not filed before vacation of same term, you must pay him 4 d. more as a *post term*. There is no further *post term* incurred till vacation of subsequent term after writ returnable.

If filed by plaintiff's attorney, according to the statute, same charge as in former case, only swearing affidavit of service (*Vide* same under head of *Affidavits*) which is filed *gratis*. Swearing affidavit of service of writ 1 s.

In eight days after return of writ, exclusive of the day of return, *viz.* If returnable 6th *November*, must be filed 15th *November*. Time when to be filed.

If defendant's attorney hath neglected to file common bail in time, he may search at clerk of common bails, to see if same is filed by plaintiff's attorney; and if not done, he may do it for defendant, tho' after the time directed by statute, as there is no date put to bail piece but only the term. Observations.

Plaintiff or defendant in filing common bail, must take care to put in the term at top of bail-piece, that writ is returnable, tho' it is sometimes not filed till a subsequent term; because it is considered by the court as an appearance of the term, writ is returnable.

Voluntary appearance on any writ of no effect, unless writ sued out within fourteen days after appearance. *Trin. 4 W. & Mary.*

If a man and his wife be sued, husband must appear for both. Practical remarks.

Attorney promising plaintiff's attorney to appear for defendant, if writ be then taken out,

The Modern Practice of the
court will oblige him so to do. Same doctrine
where he indorses undertaking to appear. *Str.*
693.

If an infant is defendant, and wont appear
by guardian, plaintiff may apply to court, and
obtain rule to name a guardian for him. *Strange*
1076.

If common bail is ordered instead of special
bail, the foregoing precedent of bail-piece
sufficient. Error in process cured by defendant's
appearance. 2 *Strange* 289.

Appearance
by original.

If special *capias* is served on defendant, at the
return thereof he must enter his appearance
with Mr. *Adams* the filazer. Pay entering
appearance 2 s.

Special Bail by Bill, &c.

Form of
special bail-
piece.

Michaelmas Term, 10th George the Third.
Lee,
Middlesex, to wit, A. B. is delivered to bail
upon an arrest.

To

J. B. of, &c. place of abode,
and degree,

and

J. C. of, &c. ditto.

R. R.
Attorney.

At the suit of *J. H.*
(or as the case is).

This

Court of King's Bench,

55

This bail-piece must be wrote on a double 1 s. stamped piece of parchment of this form. Carry same, with bail intended to be put in, to any judge of the court writ is sued out in, and his clerk will take same. Pay putting in bail in term, 4 s. in vacation, 5 s. Notice must be given plaintiff's attorney within time for putting in bail in manner following :

In the K. B. *A. B. plaintiff,*
and
C. D. defendant.

Take notice that special bail was this evening (or as the case is) put in for the defendant in this cause, before Mr. Justice *(the judge before whom you put in bail)* at his chambers in Serjeant's Inn, Chancery Lane, London; and the names of the bail are *J. B. of, &c. (place of abode and occupation), and J. C. of, &c. (ditto).* Form of notice of bail above.

If you have a mind to try the cause in term, then, for dispatch, you may add this notice of justification (or otherwise not); AND ALSO take notice, that the court of King's Bench will be moved on *(day of the week you intend to move)*, or so soon after as counsel can be heard, that the above bail may justify themselves in open court as good bail for the said defendant. Dated *(day, month, and year, you serve notice).*

Your's, &c.

To Mr. C. B. attorney } R. R. defendant's
for the plaintiff in } attorney, (or agent, if so).
this cause: These, }

There must be two full days notice of justification, exclusive of day same is given, and three, if Sunday intervenes. Note.

In London and Middlesex, special bail must be put in in four days, exclusive after return of writ. If in any other county, in six days, or Time bail must be put in.
bail-

bail-bond may be assigned. Rule, *Mich. 8 Ann.*

If the fourth or sixth day falls on a Sunday, the defendant has all day on Monday to put in bail. 2 *Strange* 914.

Of putting in bail in the country.

Carry bail-piece (on same stamp and form as before) to a commissioner of the court, and he will take recognizance.

Time to transmit same.

If bail be taken by a commissioner within forty miles of London and Westminster, it must be transmitted to one of the judges within eight days after taking thereof. If above forty miles, in fifteen days, unless all the judges be on their circuits, and then as soon as any one shall return. *Trin. 8 W. 3.*

These times must be punctually observed by attorney for defendant, or bail-bond may be assigned. *Mich. 8 Ann.*

Excepting against bail.

Exception to bail to be entered in judge's bail-book where taken, in the margin, against transcript of bail. There is nothing paid for this entry.

Form of exception.

I except against these bail.

C. D. plaintiff's attorney.
12th Nov. 1772.

Notice in writing of exception must be given defendant's attorney. *East. 2 Geo. 2. East. 3 Geo. 2.*

S I R,

Notice of exception to defendant's attorney.

Take notice that I have excepted against the bail above put in for the defendant in this cause.
Your's, &c.

To Mr. R. R. de-
fendant's attorney:
These,

C. D. plaintiff's attorney.
12th Nov. 1772.

Time plaintiff must enter exception to bail in a town cause.

Exception to bail to be made in a town cause within twenty days after notice to plaintiff, or his attorney, of same being put in; exception after that time void and of no force. *Mich. 16 Car. 2. Mich. 8 Ann.*

If put in before commissioner in the country, When taken exception must be made within twenty days after bail-piece transmitted to judge's chambers, and notice given to plaintiff or his attorney of taking same. 8 W. 3.

Then on affidavit made by defendant's attorney, or any other person who served notice of bail, to be indorsed on bail-piece; for which oath no fee to be taken; defendant's attorney may take bail-piece away from judge's file within four days next after the said twenty days, and file same with Mr. Heberden in the King's Bench office. Pay 4 d. filing, then bail is complete. See form of affidavit thereof, page 28.

If notice of exception given defendant's attorney in term, bail must justify in four days (exclusive), or must add others who will. If exception given in vacation, defendant hath till first day of subsequent term to justify his bail; giving notice of such intended justification in mean time.

If defendant's attorney wants time in term or vacation to put in bail above, add or justify same, he may get it on summons before a judge; see under head of *summons*; but then he will be tied down to terms, which may hurt his client's interest, who may only defend suit to gain time.

In the King's Bench.

A. B. plaintiff.

C. D. defendant.

Take notice that the bail put in for the defendant in this cause, of whom you have before had notice, will, on (the day you intend to justify your bail,) justify themselves in open court as good bail for the said defendant.

Dated, &c.

Your's, &c.

To Mr. C. D.

R. R. defendant's attorney.

plaintiff's attorney:

These,

If

The Modern Practice of the

If bail put in cannot justify, you may add and justify others in court at the same time.

In the *King's Bench*.

A. B. plaintiff,

and

C. D. defendant.

Notice of
adding and
justifying
bail at the
same time.

Take notice, that on (*the day you intend to add and justify*) *J. K.* of, &c. and *G. R.* of, &c. will be added to the bail above put in for the defendant in this cause, of whom you have before had notice; and that the said bail, so to be added as aforesaid, will justify themselves in open court as good bail for the said defendant. Dated, &c.

To Mr. *C. D.* }
plaintiff's at- }
torney: These,

Your's, &c.

R. R. defendant's at-
torney.

If one bail be added, and one of the original bail justify at the same time, with that added, vary the notice according to the fact.

Copies of all these notices must be served on plaintiff's attorney, by leaving same at his house with some one of his servants.

Affidavits must be made by the person who serves notice of justification. *Vide* Affidavits, at end of book, which, when you move to justify, must be annexed to notice of motion for counsel to move to justify; and same read in court by the proper officer.

Bail cannot justify in a town cause, at judge's chambers, without consent of plaintiff's attorney. Where bail are notoriously good, they are frequently allowed by plaintiff's attorney, on being paid the compliment of 10s. 6d. In that case, if he doth not attend to see them justify, you take a consent in writing to the effect following:

K. B.

K. B.

A. B. plaintiff,

and

C. D. defendant.

I do consent that the bail above put in for the Form of at-
defendant in this cause, may justify themselves torney's
before Mr. Justice *(the judge before whom bail consent to*
were put in) as good bail for the said defendant. justify bail.

Dated day of 1772.

To Mr. R. R. de- }
fendant's attor- }
ney: These, }

C. B. plaintiff's
attorney.

On this consent, you carry bail to judge's
chambers; and on shewing same to judge's
clerk, he will justify your bail. Pay in term
1 s. and in vacation 2 s. for each person justi-
fied.

Bail need not personally attend court to justi- Bail taken
fy. It is done by affidavit of their ability taken before com-
before commissioner, and transmitted to judge missioner in
annexed to bail-piece. *Vide Affidavits, page 24.* the country.

Get judge's clerk to attend the court with How to jus-
bail-piece; pay him 2 s. 6 d. Having bail tify bail in
ready, give counsel the notice and affidavit of ser- court in a
vice annexed, and 10 s. 6 d. to move to justify. town cause.

On his moving, bail will be called into court,
and sworn to their sufficiency. Court fees on
justifying bail in court about 9 s.

Bail being justified, draw up rule with Mr.
Cooper of bail justifying; pay for same 4 s. 6 d.
Serve copy on plaintiff's attorney. Take bail
piece from judge's chambers, and file same
with Mr. Heberden; pay 4 d. filing, and then
it is complete.

Get counsel to move to justify on affidavit of Method of
justification; pay him 10 s. 6 d. for motion, and justifying
court will order bail-piece to be filed. Rule to bail taken
to be drawn up and served, and bail-piece filed, by a commis-
sioner in the
country.

Bail

Within
what time
bail, when
complete,
must be filed.
Observation.

Bail must be filed within twenty days after completed, by attorney who does same. *Trin. 13 Car. 2.*

Every bail taken before or upon the continuance-day, shall be a bail, and filed of the preceding term; and every bail taken after the continuance-day, shall be a bail, and filed of the subsequent term, and not otherwise; but where any new bail is added to any other bail taken on or before the continuance-day, the same shall be taken as filed, as of that term in which the bail was first put in. *Gilbert Practice, K. B. page 341.*

Method of
opposing
bail.

If plaintiff can find out any legal disability of the bail put in for defendant, he must procure an affidavit to be made of same, see end of book, which must be given to council to oppose bail when they appear to justify, and court if of opinion that the matter of objection is of sufficient weight, will refuse to admit them to justify. In this case, court will give one or two days to defendant to add and justify others.

Practical re-
marks.

No bail can be liable to a greater sum than sworn to, and costs of suit.

If a bail is required as a witness in a cause in which he is bail, court on motion will order him to be struck out of the bail-peace, on defendant's putting in another good bail.

No justification of bail in a town-cause, but by personal appearance in court, without consent of plaintiff's attorney. *MS. Reports.*

Where debt does not require bail in its original state, the addition of costs will not warrant it. *3 Burrow 1389.*

Rule 4 & 5
W. & M.

No special bail in debt on judgment, where defendant hath superseded the original action, nor where he hath superseded himself for want of being charged in execution within two terms. *3 Burrow 1448.*

Putting in bail where not necessary, doth not prevent court from ordering common bail. *Strange 1077.*

In an action upon the statute of 9 *Ann.* for gaming, special bail must be given. *Strange 1079.*

Common bail being ordered where affidavit defective, plaintiff cannot take out a new writ till costs paid. *Strange 1209.* But where defendant has been discharged through perjured bail, a new writ may be taken out without discontinuing the former. *Strange 1216.*

Where defendant lies in person till action supersedable, though he afterwards gives a security for the debt, shall not be held to bail. *Strange 1218.*

Husband and wife arrested for debt contracted by wife before marriage, husband must put in bail for both, the wife is supersedable on common bail by summons. *Strange 1272.*

Declaration delivered, unless *de bene esse*, or plea demanded before bail is perfected, is a waiver to plaintiff's exception against bail, and in that case, defendant is not obliged to justify same.

If defendant goes to goal before return of writ for want of bail, he must put in and perfect bail above, before he can get discharged; when perfected, he may be discharged on summons.

Defendant arrested by a wrong name, on putting in bail to the sheriff, need not join in the recognizance, and then is not barred from pleading a *misnomer*. *Salk. 8, &c.*

Bankrupt obtaining his certificate before his bail are fixed, the bail are discharged, otherwise not. *Burr. Rep. 245.*

If plaintiff takes an assignment of bail bond, which defendant afterwards sets aside on perfecting his bail, if same persons as were bail below became bail above, plaintiff cannot except against them, nor rule the sheriff.

G

If

If same bail put in above as to the sheriff, plaintiff must except against them, and then rules the sheriff to compel a justification. He may in any case rule sheriff, if he does not approve of bail.

Manner of
ruling sheriff
to compel
justification.

Take out rule with Mr. *Cooper* to return the writ; pay for same 4 s.; it is a four-day rule, serve copy of same on sheriff or his deputy, if sheriff returns writ, *viz.* a caption made, or neglects so to do, in either case take out second rule from Mr. *Cooper*, to bring in the body; pay for same 4 s.; it is a six day rule; serve same on sheriff or his deputy, and if bail are not justified by or before the expiration of the said rule, then upon affidavit of service of the said two rules, see end of book, and on motion grounded thereon, court will grant an attachment against sheriff.

How to pro-
cure and exe-
cute attach-
ment against
sheriff.

Draw up rule with Mr. *Cooper* for attachment; pay for same 5 s.; take it to Mr. *Burrow* at the Crown Office in King's Bench Walks, *Temple*; pay for attachment 13 s. 4 d.; carry attachment to the coroner of the county, who makes out warrant thereon, and attaches the sheriff. On return of attachment call on coroner, who will pay you the money, and charges you about 1 l. 1 s. for same.

The method of putting in, excepting against, and completing bail on special capias in town or country.

Bail must be put in in same time in *London* or *Middlesex*, or in any other county, as on *latitat*, &c.

If *Sunday* is the last day, then to be put in on *Monday*, carry a note of bail to filacer, Mr. *Adams*, and acquaint him what hour you intend to put in bail, and he will enter them in bail book, and attend them to judge of court, and take same before him. Pay him 16 s. 6 d. term or vacation.

When bail taken, give notice to plaintiff's attorney in same manner as on *latitat*, only say was put in with the filacer before Mr. Justice (*as before*.) Exception to bail to be entered in filacer's book.

In the country the same as before on *latitat*.

The plaintiff must except in twenty days, if a town cause, after notice given by defendant's attorney; if a country cause, in twenty days after *bail piece* transmitted.

The same time to add and justify after exception as on *latitat*, with notice to plaintiff's attorney, and affidavit thereof when you move to justify.

If bail justify in court, get filacer to attend court with his bail-book: when counsel moves to justify, filacer will call the bail, and counsel will examine them as to their sufficiency, which will be allowed of course, if not opposed by plaintiff's attorney on sufficient ground. Pay filacer for attending with bail-book 3s. 4d.; court fees as before. Draw up rule, and serve same as on *latitat*.

If bail justify before a judge at chambers by consent of plaintiff's attorney; filacer attends with bail-book and calls them over, and judge's clerk justifies them. Pay filacer 3s. 4d. judge's clerk the same as before. Draw up rule, and serve same on plaintiff's attorney.

Assignment of Bail Bond.

If bail be not duly put in, or if excepted against, do not justify themselves in due time. If in *Middlesex*, apply to under sheriff at his office in *Furnival's Inn*; if in *London*, apply to secondary of one of the compters, and in the country to under-sheriff, who will make you an assignment of bond, for which you pay him 5s. and give him a receipt for same as plaintiff's attorney.

When to be assigned, stat. 4 & 5 Ann. How to get assignment from sheriff.

torney. In other counties, the fee on assigning bail-bond differs, but not much.

Before any writ taken out, or action brought on bail-bond, the same must be stamped with a treble sixpenny stamp, just over the top of assignment, and the Stamp Office, upon or near the stamp, write in red ink the day of the month and year the same was stamped. You get it stamped at the Stamp Office in *Lincoln's Inn*, who attend every day, but holidays, from eight to two o'clock.

Method of
bringing an
action there-
on.

Assignment of bail-bond being complete, you take out bill of *Middlesex latitat*, &c. according to county or city where writ is issued, or rather where bond was assigned; for it is the assignment that gives plaintiff a right to his action thereon. You serve defendant and his two bail with copies of the writs, &c. and at return declare against them, as under head of declaration.

After you have once taken assignment of bail-bond, sheriff is not answerable for their sufficiencies, nor can you resort back to him by rule.

General
terms on
which court
will stay pro-
ceedings on
bail-bond.

You must put in and perfect your bail, (*this must be done before you can have any relief from court*) pay costs incurred by bail-bond being assigned, to be taxed by the master; receive a declaration in the original action, plead to issue, and take short notice of trial, so that same may be tried in term; or if plaintiff hath lost a trial, the court will require that bail consent, that judgment be entered against them on bail-bond for plaintiff's security. But if plaintiff might have had judgment in the original action had bail been completed in time, court will not stay proceedings on bail-bond.

Practical re-
marks.

Relief under the above restrictions may be obtained by summons before a judge, or by motion of court. If by motion of court, notice thereof must be served on plaintiff's attorney, and

and affidavit of service of notice must be annexed to same when moved.

Assignment of bail-bond, unless made by sheriff or his deputy, not good. *Strange* 60.

After bail-bond forfeited, and court set same aside, defendant cannot plead in abatement to original action. *Salk.* 519.

If error in writ on which bail-bond taken, bail discharged. *Strange* 399.

Debt on bail-bond, defendant cannot traverse the arrest of principal. *M. S. Rep. S. P.*

Defendant hath four days exclusive of day of return in *London and Middlesex*, and six in any other county, (Sunday reckoned one, if not the last) to put in bail after return of writ. If assignment of bail-bond be taken by plaintiff's attorney before time limited, court will set same aside with costs against plaintiff on motion. *Strange* 782.

Bail-bond must be taken in sheriff's name, and as sheriff. *Stat. 23 Hen. 6.*

Though bond defective in form, if it appears sufficiently on declaration, it will do. *Strange* 893.

Action on bail-bond must be brought in the court where original bail given. *3 Bur.* 1923.

No bail required on bail-bond, nor on action on replevin bond. *Cases B. R. 320, 380.*

Where bail in first action, and plaintiff nonsuited, defendant must put in bail to second action. *Strange* 439.

Of rendering Principal in discharge of his Bail.

Mefne pro-
cess.

Bail to sheriff must put in bail above, before they can take and render principal.

Special capi-
as, or bail-
bond.

Bail, when bond assigned, must put in and perfect their bail, and then move court, or by summons before a judge, set assignment of bond aside on payment of costs, before they can take or render principal.

If plaintiff hath lost a trial in original action, bond cannot be set aside, nor can bail render.

When ren-
der must be
made.

If bail-bond put in suit against principal and bail, bail must take principal and complete render within the eight days for their appearance, which are exclusive of day of return of writ.

On recogni-
zance of bail.

Bail being served with copies of writs, they have eight days in full term after return of writs, exclusive of return-day, to render principal and complete same.

If plaintiff
proceeds by
scire facias.

It is most prudent for bail to render principal on *ca. sa.* being returned, because plaintiff may proceed to fix them on getting two *nibils* returned without a rule given, or notice from sheriff, but he may be rendered on return-day, if but one *scire facias*, or on return-day of second *scire facias*, if two sued out, *sedente curia*.

In the K. B.

A. B.
against
C. D.

Form of sur-
render.

Middlesex, to wit, C. D. the above defendant, did this day of 1772, render himself (or was rendered in discharge of his bail) into the custody of the marshal, at the suit of the above plaintiff in discharge of his bail, and was thereupon committed by (Mr. Justice—the judge before whom rendered.) This render is left with judge's clerk, where rendered,

dered, made, and wrote on a piece of unstamped parchment. Pay judge's clerk for render 8s. 6d.; if for render and commitment, 6s. 6d. more; as soon as done, give plaintiff's attorney notice in writing of such render.

In the K. B.

A. B.

against

S I R,

C. D.

Take notice, that the above defendant, C. D. Form of no-rendered himself (or was rendered, as the case may be) into the custody of the marshal, &c. the

day of in discharge of his

bail, at the suit of the above plaintiff A. B.

and was thereupon committed by (the judge before whom rendered) Dated

day of

1772.

Yours, &c.

R. B. attorney for the

To Mr. H. plaintiff's

attorney: There, }

defendant, (or at-

torney for the bail,

as the case is.)

There must be an affidavit made of service of this notice, before officer who hath the custody of the bail-piece, will deliver same to be filed. On producing affidavit sworn, he takes same and keeps it as his voucher, and delivers bail-piece to the attorney to be filed. *Vide Affidavits. Page 28.*

Another copy of render in form aforesaid, wrote on parchment, must be signed by judge before whom same was made, and carried over to marshal with defendant, or any other goaler to whom defendant is to be rendered.

Marshal (or any other goaler) on producing render signed by judge, will give you a certificate that defendant is in his custody, which you must carry with bail-piece to Mr. Heberden, he files certificate, and thereupon discharges bail-piece; pay marshal for certificate 3s. 6d.; Mr. Heberden for filing and discharging bail-piece, 4d.; you pay him 4d. each post term.

This

This done, you enter commitment in Mr. Caley's commitment-book, and then render is complete; pay him 4d.

Bail are not properly discharged till all these several matters are done.

If defendant is in custody of *habeas*, and lodge it with goaler, in whose custody defendant is, and he will bring him into court, or to a judge's chambers, as the case may require, in order that he may render himself, or that his bail may do it, and the same steps must be taken by the bail as where defendant is at large to complete render; only *habeas*, and return thereof, is left with judge, and return of *habeas* marked on surrender, signed by him, which is carried over to goaler, into whose custody defendant is rendered.

When render made, attorney must get a tipstaff to carry him over to marshal, or goaler. The usual fee to tipstaff is 10s. 6d.

Practical remarks. On surrender after *ca. sa.* returned, principal ought to be two days in marshal's custody, to make same a good render. 6 Mod. 239.

Bail (on *action on recognizance*) have eight days in full term to render principal.

The King's debtor, or a person convicted of felony, may be brought up by *habeas corpus* before a judge to be rendered in discharge of his bail on a civil action. *Strange* 1217.

An impressed man may be taken by his bail and rendered, and after *exoneratur* entered on bail-piece; marshal will deliver him into his former custody. *Bur. Rep.* 340.

Bail may take principal on a Sunday, and confine him till next day, and then render him. 6 Mod. 231.

No surrender good till notice in writing given to plaintiff's attorney. Rule, *Trin.* 1 Ann.

Render of principal before return of second *scire facias*, without notice, does not vitiate the render;

Court of King's Bench.

69

render; but if plaintiff proceeds for want of notice, bail must pay him additional costs before they are discharged. 6 *Mod.* 238.

Entry of render in marshal's book in King's Bench office the usual practice.

A *committitur* must actually be entered on record before the end of the second term, or prisoner is intitled to his discharge. 3 *Bur.* 1841.

If bail-piece filed without being discharged by master, bail remain liable, though defendant be in actual prison. *Mod. Cases*, 340.

Bail need not render principal till *ca. sa.* lodged in sheriff's office, and then the neglect of doing same is at their peril. 3 *Bur. Rep.* 1360.

If defendant secretes himself to avoid being rendered by his bail, they, or either of them, may take him wherever they meet with him, so they break no locks. When taken, one of the bail must always remain with him (*as they cannot depute their right of custody to another without defendant's consent in writing*) till he is rendered. If he consents to go to an officer's house till rendered, then bail must take a consent from him as below. When bail have delivered defendant into the custody of a tipstaff, he is answerable if he lets him escape. Bail may render defendant in court, or before a judge at his house or chambers.

In the *K. B.*

A. B.
against
C. D.

I do consent and agree to remain in the custody of Mr. *William Norden*, officer to the sheriff of *Middlesex*, at his house situate in consent. *Southampton street, Holborn*, in the county of *Middlesex*, till I am rendered by my bail at the suit of the said *A. B.* the plaintiff. Dated day of 1772.

Witness *R. R.* attorney for the defendant's bail.

C. D. the defendant.

DECLA-

DECLARATION.

What it
should con-
tain.

It must contain the complaint or demand of the plaintiff with certainty, in order to enable defendant to make a proper defence.

By 36 of *Ed. 3.* It was ordained that a count, which is the same with a declaration, shall be good, if it hath matter of substance, tho' the terms therein are not perfectly apt and proper.

How to be
ingrossed for
delivery.
Trin. 12 W.
3.

Ingross same on treble penny stamp paper; there must be no abbreviations, nor must you write on the back; charge ingrossing 4 d. *per sheet*, (72 words making a law sheet) besides duty; nothing charged for the paper. You charge defendant's warrant of attorney 4 d. and if plaintiff files common bail for defendant, according to the statute, charge for same 7 s. 2 d. *Vide* manner of making these charges under head of *declaration*.

How to de-
liver or file
same when
defendants
doth or doth
not appear
at return of
writ.

If defendant's attorney hath appeared, plaintiff's attorney must deliver copy of declaration, ingrossed as aforesaid; for which defendant's attorney, or his clerk or agent in his absence, must pay as before directed, on same being demanded by plaintiff's attorney. On refusal, plaintiff's attorney may sign judgment; but it is not usual in practice, on delivery of declaration, to insist on payment, tho' plaintiff's attorney may justify signing judgment on refusal. If his place of abode is unknown, or defendant hath not appeared, it may be left in King's Bench office with clerk of declarations; and notice must be given defendant, or his attorney, in writing, (*for till such notice is given, declaration is not well delivered*).

Rule to
plead.

You must give rule to plead when you deliver or file declaration in office. This rule is given with *Mr. Cooper*; pay for same 1 s. 10 d. in all cases. If defendant's attorney hath appeared,

peared, you deliver declaration to him, and demand plea in writing, within the time of rule to plead, which is a four day rule, exclusive of the day given; so that rule given the 6th *November*, no judgment can be signed thereon till the 12th in the afternoon. When time to plead out, and no plea delivered to plaintiff's attorney, entered with Mr. *Caley*, nor filed with Mr. *Benton*, at both which places you must carefully search, you may sign judgment with the clerk of the judgments, Mr. *Caley*, at whose office you search by defendant's surname; at Mr. *Benton's*, by plaintiff's surname.

If declaration filed with Mr. *Rymel*, clerk of declarations, and notice thereof given to defendant, or his attorney, no demand of plea necessary.

No plea to be accepted on declaration delivered, or left in office, till same taken out and paid for; and plaintiff may sign judgment, notwithstanding such plea. Rule, *Mich. 10 Geo. 2.*

In all cases where copy of process is served on defendant, and common bail filed according to statute, copy of declaration must be left in office, and notice in writing given defendant, or left for him at his last or usual place of abode; or if not to be found, notice to be stuck up in King's Bench office; and from the time of giving, leaving, or sticking up notice only, declaration is well delivered. If defendant doth not plead within time limited by rule (*a rule to plead having been given with Mr. Cooper and out*), you may sign judgment without any other or further calling for a plea, and give notice of executing your writ of inquiry, in which you will be governed as in your notice of declaration. *Trin. 1 Geo. 2.*

Where writ returnable the first, second, or any return before the third return, (as
every

Delivering
declarations
upon ap-
pearance,
entered ac-
cording to
statute.

The Modern Practice of the

every day in term, except Sunday, or non judicial days, is a return day, you may, without waiting for defendant's filing common or special bail, deliver or file a declaration *de bene esse*, on the return day of process, and give notice thereon to plead within four or eight days conditionally, till common bail is filed, or special bail put in and perfected.

How to deliver declaration *de bene esse*, on process returnable the first, second, or any return before the third.

If in *London* or *Middlesex*, and defendant lives within twenty miles thereof, where action bailable, declaration is to be delivered conditionally, to plead in four days. If not bailable, to be delivered conditionally, to plead in eight days. These four and eight days are exclusive of day of delivery; if *Sunday* the last day of either, defendant hath the whole day on *Monday* to plead. In these cases, defendant must plead within the time, without imparlance.

Notice necessary when defendant lives above twenty miles from *London*.

In all cases where plaintiff declares in any other county than *London* or *Middlesex*, or defendant lives above twenty miles from *London*, declaration must be delivered with eight days notice to plead, in which time defendant must plead without imparlance. Rule, *Trin.* 5 & 6 of *Geo.* 2.

Declarations delivered as aforesaid, must be delivered four days before the end of the term writ is returnable, exclusive of the day of delivery, or defendant will be intitled to an imparlance till the next term. It is in that case usual for defendant to take out summons to shew cause why he should not have imparlance.

When to be delivered *de bene esse*.

On all process returnable any day before third return of term, declaration may be delivered, *de bene esse*, on return-day, to plead according to residence of defendant.

The reason defendant hath eight days in *London* and *Middlesex*, on copy of process served on him, is, that by the late statute he hath eight days after return of writ to file common bail; and

and it would be absurd to sign judgment against him till he is in court, which he is not considered to be till he hath filed common bail, or it is done for him by plaintiff's attorney. *Vide* common bail.

On bailable process, tho' declaration delivered, with four days to plead, plaintiff cannot demand a plea till bail is perfected. The demand is a waiver of plaintiff's exception to bail; and defendant, if he hath given plaintiff notice to justify them in court, need not do it after such demand of plea.

Demand of plea before bail perfected, waiver thereof.

Time for appearance being elapsed, and no appearance entered by defendant, a plea demanded after bail perfected, rules to plead in both cases given and out, and no plea put in by defendant, plaintiff's attorney may file common bail in the first instance, according to the statute, and sign judgment in both cases, without further calling for plea.

Declaration cannot be delivered till time to appear is out, or bail perfected, if done in time; and then must be delivered, with notice to plead, within the first four days of next term.

Method of delivering declaration on process, returnable the third or any other return.

Rule to plead may be given when declaration delivered, and demand of plea made, at any time before time to plead is out. Plaintiff having filed common bail for defendant through his neglect, may deliver declaration by-the-bye against defendant, in as many actions as he thinks fit, before the end of second term; but no other person can.

When to deliver declaration by-the-bye.

If defendant files common or special bail, any creditor of his may deliver a declaration by-the-bye against him before the end of term writ is returnable, on which defendant hath filed common or special bail, without taking out process against such defendant, but not afterwards. *Rule, Mich. 10 Geo. 2.*

The Modern Practice of the

A. B. plaintiff,
and
C. D. defendant,

In the K. B. between

Form of no-
tice of decla-
ration.

Take notice, that there is a declaration filed against you in this cause in the King's Bench office, in the *Inner Temple, London*, with the proper officer there, (*conditionally*) till good bail is put in and perfected, (*if special bail*) if common bail (*say, conditionally till common bail is filed*) as of this present (*the term declaration is of*) in an action on the case upon several promises, (*or as the nature of the action is*) to the plaintiff's damage of *l.* (*the damage laid in declaration*) and unless you plead thereto in four days, (*if special bail, or eight days if common bail*) judgment will be entered against you by default, by

Yours, &c.

Dated day of Nov.

1772.

To Mr. C. defen- }
dant's attorney.

R. R. plaintiff's
attorney.

Form of no-
tice for Rule to
plead.

Michaelmas, 12th George the Third,

A. }
against
B. }

Rule to plead.

P. Phillips
attorney.

6th Nov. 1772.

This note to be left at Mr. Cooper's office, when you give rule to plead, who draws up same. Pay for rule 1 s. 10d.

A. against B.

Form of de-
mand of plea
in writing.

The plaintiff demands a plea in this cause, otherwise judgment, by

To Mr. A. defen- }
dant's attorney.

Your's, &c.

P. Phillips,
plaintiff's attorney.

6th Nov. 1772.

On

Court of King's Bench.

75

On demand of plea, after rule expired, defendant hath only till the afternoon of next day to plead. If defendant is under an order of court or judge to plead, he must plead by that time, though no rule entered, or plea demanded by plaintiff's attorney.

Michaelmas Term, 12th George the Third.

Lee.

Form of indorsing back of declaration for delivery.

A. }
against } Declaration.
B. }

l. s. d.

Copy declaration, Fo. - - -

Duty and warrant - - -

Filing bail according to statute }

(if so)

o 7 2

If delivered to attorney, it is usual to put his name before notice to plead, (*if left in office need- less*) as notice supplies its place. Indeed in that case, no indorsement of time to plead is necessary, because notice acquaints him of the time when.

Notice to plead is indorsed, when declaration delivered *de bene esse*.

Mr. A.

This declaration is delivered conditionally, Notice in- till special bail is put in and perfected, (*or till dorse on common bail is filed*) to plead in four or eight back of de- days, (*as the case may be.*) claration.

Dated 6th Nov. 1771.

If not delivered conditionally, and defendant hath an imparlance, then indorse is thus:

The defendant is to plead to this declaration Notice when within the first four days of next term, otherwise defendant judgment will be entered against him by de- hath impar- fault. launce.

H 2

If

If declaration is not delivered within four terms after writ returnable, defendant has a right to a whole term to plead, unless cause tied up by injunction or privilege; all rules to plead must be given within term, or four days after.

Practical remarks.

Where declaration delivered or filed, a bill to ground same ought to be filed with Mr. Rymel, clerk of declarations. For filing same you pay 4d. It is now disused, except against attornies, prisoners, and where writ of error is brought.

All pleadings while on paper are amendable by summons before a judge; clerical errors after proceedings are recorded. *L. C. J. Holt.*

Declaration may be amended in form after general issue pleaded, and before entry, without costs, or giving defendant an imparlance. If in substance, plaintiff must pay costs or give imparlance: If after special plea, amendment of substance, must pay costs, and hath not his election to pay costs, or give imparlance. These amendments are made by summons before a judge. *Vide summons.*

The election of costs or imparlance is vested in defendant.

On all amendments, plaintiff must give fresh rule to plead, unless given of same term. amendment is on.

In all cases of amendment, if plea pleaded, defendant may plead again, and has two days after amendment and costs paid to plead *de novo*.

After second term, and plea pleaded, plaintiff cannot add a new count to declaration, if issue entered on record; otherwise he may. *L. C. J. Holt.*

If defendant takes costs from plaintiff for amendment after issue joined, he cannot plead anew,

anew, but hath his election to take costs, or plead *de novo*.

Bill filed against attorney or prisoner, may be amended during same term before plea, but not after, without order of judge or court.

Bail filed according to statute, is not such a bringing defendant into court, as warrants delivering declaration by-the-bye. *Strange* 1027.

Plaintiff may discontinue before or after declaration delivered, by taking out rule with Mr. Cooper, for which is paid 4s. serving same on defendant's attorney, and paying costs as taxed; but after issue joined on demurrer, rule to discontinue must be on motion.

Where infant declares, rule for admission must be produced before defendant is obliged to plead.

General Directions for drawing Declarations.

In all causes of action *not* on the *case*, the certain day when cause of action arose must be laid in the charge in declaration; but in actions on the *case*, you are not obliged to lay in your declaration the certain day when cause of action accrued; it may be laid as done on any day after cause of action, and before writ sued out, Sunday excepted. If cause of action arises in term, and action commenced the same term, you must not intitle your declaration *Trinity* (or any other) term generally, but *Trinity* (or any other) term to wit, on next after, &c. in the year, &c.

In all local actions, *venue* must be laid in the county where cause of action arose; and if in borough, town, or village, where the lands or premises are situate. And by *Stat. 21. Jac. 1.* if action brought

brought against officer for matter relating to his office, declaration must be laid in county where cause of action arose; but after the expiration of his authority, not necessary.

Debt for rent, either in county where deed made or premises lie, if against lessee; if against assignee, must be brought in county where lands, &c. lie. *Strange 776.*

In all transitory actions, where no possession awarded, *venue* may be laid in such county as plaintiff pleases. If part arises in one county, and part in another, plaintiff may lay it in either at his option.

In trespass for goods, assault, or imprisonment, if not laid in proper county, on motion before plea pleaded, and affidavit to support same, court will change the *venue*, but defendant must plead to such new action, as he ought to have done to the old one, without delay.

In transitory actions, court will not change *venue* if plaintiff will engage to give material evidence in county where laid, but will change the *venue* even into a county palatine, on sufficient ground shewn. 3 *Bur.* 1564. *Venue* may be changed in these actions upon oath, if the defendant come in by exigent. Rule, *Mich.* 1654.

Defendant must move to change *venue* before he pleads, and plaintiff to discharge defendant's rule, must undertake to give material evidence before replication or plea. *Strange 858.*

Plaintiff cannot regularly move to change *venue*, but may do it in effect by moving to amend. *Strange 1162.*

An attorney, or barrister, has privilege to change as well as lay *venue*, but cannot where joined in action with unprivileged persons. *Strange 610.*

After essoin day of subsequent term to return of writ, plaintiff cannot amend so as to change *venue*.

venue, though he would pay costs, or give imparlance. 2 *Strange* 858.

In causes removed out of cities or towns where judges seldom come, if transitory, *venue* must be laid in the county where said city or town lies. *Mich.* 1654.

After *venue* changed by defendant, he cannot plead in abatement. *MS. Notes.* If both parties privileged, plaintiff may chuse his *venue*. 2 *Show.* 176.

Attornies, when plaintiffs, have a right to lay *venue* in *Middlesex*, which defendant on motion cannot change, but may, if laid in *London*, or any other county. The privilege extends to judge's clerks, serjeants at law, and barristers. *Salk.* 668, 670.

Forms of DECLARATIONS.

In the K. B.

Michaelmas Term, the 12th of George the Third.

Lee.

London, to wit, *W. C.* complains of *T. R.* being Declaration in the custody of the marshal of the *Marshalsea* in case.

of our Lord the now King, before the King himself, for that whereas the said *Thomas*, on the day of (*some day after cause of action accrued, and before writ sued out*) in the year of our Lord 1772, at *London* aforesaid, to wit, in the parish of *St. Mary-le-Bow*, in the ward of *Cheap*, was indebted to the said *William*, in the sum of 50l.

of lawful money of *Great Britain*, for work and labour by the said *William*, before that time done, performed, and bestowed for the said *Thomas*, and at his special instance and request, and also for divers materials and necessary things used and applied in and about that work, before that time, found and provided by the said

Count for
work and la-
bour done
and perform-
ed.

William,

William, at the like instance of the said *Thomas*, and being so indebted, he the said *Thomas*; in consideration thereof afterwards, to wit, on the same day and year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, undertook, and then and there faithfully promised, the said *William*, to pay him the said sum of money when he should be thereto afterwards requested: AND WHEREAS the said *Thomas* afterwards, to wit, on the same day and year last aforesaid, at *London* aforesaid, in the parish and ward aforesaid, in consideration that the said *William*, at the like special instance and request of the said *Thomas*, had before that time done, performed, and bestowed other work and labour for the said *Thomas*, and had also found and provided divers other materials and necessary things used and employed in and about the said work last mentioned; he the said *Thomas* undertook, and then and there faithfully promised the said *William* to pay him so much money as he therefore reasonably deserved to have; and the said *William* avers, that he therefore reasonably deserved to have of the said *Thomas*, other 50*l.* to wit, at *London* aforesaid, in the parish and ward aforesaid, whereof the said *Thomas* then and there had notice: AND WHEREAS the said *Thomas* afterwards, to wit, on the same day and year last aforesaid, at *London* aforesaid, in the parish and ward aforesaid, was indebted to the said *William* in other 50*l.* for divers goods, wares, and merchandizes by the said *William*, before that time sold and delivered to the said *Thomas*, at his special instance and request; and being so indebted, he the said *Thomas* in consideration thereof afterwards, to wit, on the same day and year last aforesaid, at *London* aforesaid, in the parish and ward aforesaid, undertook, and then and there faithfully promised the said *William*, to pay him the said sum of money last mentioned,

Count for
goods sold
and delivered,
ed.

mentioned, when he should be thereto afterwards requested : AND WHEREAS the said *Thomas* afterwards, to wit, on the same day and year last aforesaid, at *London* aforesaid, in the parish and ward aforesaid, in consideration that the said *William*, at the like special instance and request of the said *Thomas*, had before that time sold and delivered to the said *Thomas*, divers other goods, wares, and merchandizes, he the said *Thomas* undertook, and then and there faithfully promised the said *William*, to pay him so much money as he therefore reasonably deserved to have, and the said *William* avers that he therefore reasonably deserved to have of the said *Thomas* other 50*l.* to wit, at *London* aforesaid, in the parish and ward aforesaid, whereof the said *Thomas* then and there had notice : AND WHEREAS the said *Thomas* afterwards, to wit, on the same day and year last aforesaid, at *London* aforesaid, in the parish and ward aforesaid, was indebted to the said *William* in other 50*l.* of like lawful money of *Great Britain*, for money by the said *William* before that time laid out, expended, and paid for the said *Thomas*, and at his special instance and request; and being so indebted, he the said *Thomas* in consideration thereof afterwards, to wit, on the same day and year last aforesaid, at *London* aforesaid, in the parish and ward aforesaid, undertook, and then and there faithfully promised the said *William*, to pay him the said sum of money last mentioned, when he should be thereto afterwards requested, yet the said *Thomas* not regarding his aforesaid several promises and undertakings so by him made in this behalf as aforesaid, but contriving, and fraudulently intending, craftily and subtilly to deceive and defraud the said *William* in this respect, hath not yet paid the said several sums of money before mentioned, or any part thereof, to the said *William*, although to do this the said

Count for
money laid
out and ex-
pended.

Thomas

The Modern Practice of the

Thomas was requested by the said *William* afterwards, to wit, on the same day and year last aforesaid, and often afterwards, to wit, at *London* aforesaid, in the parish and ward aforesaid; but he to pay the same to the said *William*, hath hitherto wholly refused, and still doth refuse to the said *William* his damage of 200*l.* and therefore he brings his suit, &c.

I. C. for the plaintiff,
for the defendant. }

Pledges } *John Doe*
to } and
prosecute } *Richard Roe.*

If action
brought by
an executor
or admini-
strator.

If action brought by an executor or administrator, they must be so styled at the beginning of the declaration, and the charge laid in declaration as done by testator, or intestate in his life-time for defendant, and that defendant promised him payment for same. Averment must be by executor or administrator; and declaration concludes thus, Yet the said *Thomas* not regarding, but contriving, &c. to defraud the said (mentioning name of testator or intestate) in his life-time, and the said *William*, executor or administrator, (as case may be) after his death, in this respect, &c. although to do this the said *Thomas* was requested by the said (here insert name of testator or intestate) in his life-time, and afterwards, to wit, on the same day and year last aforesaid, and after his death, by the said *William* (executor or administrator) to wit, on (here insert some day after death of testator or intestate, and after probate or administration granted, and before action brought) was requested to do, but the said *Thomas* hath refused to pay the aforesaid several sums of money to the said in his life time, or to the said *William* since his death, and still refuses to pay the same to the said *William*, to the damage of the said *William*,
200*l.*

Court of King's Bench.

83

2001. And therefore he brings suit, &c.
And the said *William* brings here into court,
the letters testamentary of the said
deceased, whereby it appears to the court here,
that the said *William* is the executor of the last
will and testament of the said
and thereof hath the administration, &c.

If action brought by administrator, this *pro-*
fert in curia mult be varied accordingly.

In the K. B.

Michaelmas Term, in the 12th year of
the reign of King *George the Third*.

Lee.

Middlesex, to wit, *J. C. H. P.* and *T. P.* Declaration
assignees of the goods, debts, and effects of in case by
M. E. late of, &c. complain of *S. L.* being assignees on
in the custody of the marshal of the *Marshalsea* note indorsed
of our Sovereign Lord the King, before the to a bank-
King himself: For that whereas the said *S.* after rupt.
the first day of *May*, in the year of our
Lord 1705, to wit, on the (*here insert date of*
note) at *Westminster*, in the county of *Middlesex*,
made a certain note in writing, subscribed with
his own hand, commonly called a promissory
note, bearing date the same day and year last
mentioned, by which note the said *S.* promised
to pay Mr. *R. C.* or order, the sum of 40 l. three
months after date, for value received by the said
Samuel; and the said sum of money being un-
paid, the said *R. C.* afterwards, to wit, on the
same day and year last abovementioned at *West-*
minster aforesaid, in the county aforesaid, in-
dorsed the said note, his own hand being there-
unto subscribed; and by the said indorsement
appointed the contents of the said note to be paid
to

The Modern Practice of the

to the said *M. E.* or his order, for value received by the said *R.* of which premisses the said *Samuel* afterwards, and after the end of the said three months, to wit, on the day of in the said year last abovementioned at *Westminster* aforesaid, in the county aforesaid, had notice, by reason whereof, and by force of the statute, in that case lately made and provided, the said *Samuel* became liable to pay to the said *M.* the said sum of money contained in the said note; and being so liable, the said *M.* became a bankrupt within the true intent and meaning of the several statutes made concerning bankrupts, some or one of them; and the said note, and the money due thereon, (among other things), was in due form of law, according to the form of the statute made and provided against bankrupts, assigned to the said *J. C. H. P.* and *T. P.* by means whereof the said *Samuel* became liable to pay to the said *J. C. H. P.* and *T. P.* the said sum of money mentioned in the said promissory note; and being so liable, he the said *Samuel*, in consideration thereof, afterwards, to wit, on day of

in the year of our Lord 1772, at *Westminster* aforesaid, in the county aforesaid, assumed upon himself, and to the said *J. C. H. P.* and *T. P.* then and there faithfully promised that he the said *Samuel* would pay to the said *J. C. H. P.* and *T. P.* the said sum of money in the said promissory note mentioned, when he should be thereunto requested: AND WHEREAS also the aforesaid *Samuel*, on the day of in the year of our Lord 1772, at *Westminster* aforesaid, in the county aforesaid, was indebted to the said *M.* in the sum of 50 l. of lawful money of *Great Britain*, for so much money by the said *M.* for the said *Samuel*, and for the use of the said *Samuel*, before that time laid out and expended at

his special instance and request : And being so indebted, the said *M.* became a bankrupt within the true intent and meaning of the several statutes made concerning bankrupts, some or one of them ; and the said sum of 50 l. (among other things) was in due form of law, according to the form of the statute made and provided against bankrupts, assigned to the said *J. C. H. P.* and *T. P.* by means whereof, the said *Samuel* became indebted and liable to pay to the said *J. C. H. P.* and *T. P.* the said 50 l. and being so indebted and liable to pay, he the said *Samuel*, in consideration thereof, afterwards, to wit, on the day of in the year last mentioned, at *Westminster* aforesaid, in the county aforesaid, assumed upon himself, and then and there faithfully promised the said *J. C. H. P.* and *T. P.* that he the said *Samuel* would well and truly pay and satisfy the said 50 l. to the said *J. C. H. P.* and *T. P.* when he should be afterwards thereunto requested : YET the said *Samuel*, not regarding his said several promises and undertakings made in manner aforesaid, but contriving and fraudulently intending, craftily and subtilely, to deceive and defraud the said *J. C. H. P.* and *T. P.* in this behalf, hath not paid them, or any of them, or the said *M.* the said several sums of money, or any part thereof, or any ways contented them, or any of them, for the same ; although to pay the same to the said *J. C. H. P.* and *T. P.* he the said *Samuel* afterwards, that is to say, on the same day and year last abovementioned, at *Westminster* aforesaid, in the county aforesaid, was requested by the said *J. C. H. P.* and *T. P.* but the said *Samuel* to pay the same to them, or any of them, hath hitherto refused, and doth yet refuse, to the damage of the said *J. C. H. P.*

I

and

The Modern Practice of the
and T. P. 50 l. And thereupon they bring this
suit, and so forth.

R. H. attorney for the plaintiffs. }

attorney for the defendant }

Pledges } John Doe
to } and
prosecute, } Richard Roe.

Hilary Term, in the 12th year of the
reign of King George the Third.

Lee.

Declaration
for an af-
sault.

Middlesex, to wit, R. R. complains of S. D.
junior, being in the custody of the marshal of
the *Marshalsea* of our Sovereign Lord the King,
before the King himself: For that the said S.
on the day of in the year of
our Lord 1772, with force and arms, to wit,
with swords, sticks, staves, fists, knives, and
clubs, at *Westminster*, in the county aforesaid,
made an assault upon the said R. and him
then and there did beat, bruise, cut, wound,
and ill treat, so that his life was greatly despair-
ed of: And also, for that the said S. afterwards,
to wit, on the same day and year last aforesaid,
at *Westminster* aforesaid, in the county aforesaid,
with force and arms, made another assault
upon the said R. and him then and there did
again beat, bruise, cut, wound, and ill treat, and
other injuries to the said R. then and there did,
to the great damage of the said R. and against
the peace of our said Lord the King: Where-
fore the said R. says, that he is injured, and
hath suffered damage to the value of 30 l. And
therefore he brings suit, &c.

T. C. for the plaintiff. }

for the defendant. }

Pledges } John Doe
to } and
prosecute, } Richard Roe.

Hilary

Hilary Term, in the 12th year of the
reign of King George the Third.

Lee..

Middlesex, to wit, *A. C.* complains of *W. B.* be- Declaration
ing in the custody of the marshal of the *Marshall* in trespass
sea of our Lord the now King before the King and assault.
himself: For that the said *W.* on the day of
in the year of our Lord one thousand seven
hundred and seventy-two, with force and arms,
&c. broke and entered the messuage or dwelling
house of the said *A.* situate, standing, and be-
ing in the parish of within the liberty
of *Westminster*, in the county of *Middlesex* afore-
said, the doors thereof being then and there
shut, locked, and fastened, and then and there
made a great noise, disturbance and affray, in
the said house, and kept and continued in the
said house, making and continuing such his
noise, disturbance and affray therein for a long
time, to wit, for the space of hours
then next following; and thereby then and
there greatly disturbed and disquieted the said
A. in the peaceable and quiet possession, use,
occupation, possession, and enjoyment of his
said house; and then and there broke to pieces,
spoiled and destroyed, the doors, to wit, six
doors of the said *A.* of a large value, to wit,
of the value of ten pounds, then and there af-
fixed to the said house; and the locks, to wit,
six locks of the said *A.* of a large value, to wit,
of the value of forty shillings, to the said doors,
then and there respectively affixed, and with
which the said doors were then and there re-
spectively locked and fastened; and then and
there staid and continued in the said house for a
long time, to wit, from thence until the day of
exhibiting the bill of the said *A.* without the leave

I 2

or

The Modern Practice of the

or licence, and against the will of the said *A.* and then and there expelled, put out, and amoved the said *A.* from the possession and occupation thereof for a long time, to wit, for and during all the time aforesaid, and other wrongs to the said *A.* then and there did against the peace of our said Lord the King, &c. To the said *A.* his damage of fifty pounds, and therefore he brings his suit, &c.

W. H. attorney for the plaintiff. }
attorney for the defendant. }

Pledges } John Doe
to } and
prosecute, } Richard Roe.

Trinity Term, in the 12th year of the
reign of King George the Third.

Lee.

Declaration
in trespass
and assault
for crim.
con.

Middlesex, to wit, *T. B. Gent.* complains of *W. M. Gent.* being in the custody of the marshal of the *Marshalsea* of our Lord the now King, before the King himself: For that the said *William*, on the day of in the year of our Lord one thousand seven hundred and seventy-two, at *Westminster*, in the said county of *Middlesex*, with force and arms, made an assault upon *Frances B.* then and still the wife of the said *Thomas*, and seduced, ravished, debauched, lay with, deflowered, and carnally knew the said *Frances*, and took and led away the said *Frances*, so being the wife of the said *Thomas*, from the said *Thomas*, and kept and detained the said *Frances*, the said wife of the said *Thomas*, from the said *Thomas*, for a long time, to wit, from the said day of aforesaid, until the exhibiting of the bill of the said *Thomas*, whereby the said

said *Thomas*, during all the time aforesaid there, lost, and was deprived of the benefit and service, and the aid, fellowship, comfort, counsel, and assistance of his said wife; and which he ought, during all that time, to have had and enjoyed with his said wife: AND ALSO, for that the said *William*, on the said

day of in the year of our Lord one thousand seven hundred and seventy-two aforesaid, and on divers other days and times between that day and the day of the exhibiting of the said bill of the said *Thomas*, at *Westminster* aforesaid, in the said county of *Middlesex*, with force and arms, assaulted the said *Frances*, then and still being the said wife of the said *Thomas*, and there beat, seduced, ravished, debauched, deflowered, lay with, and carnally knew her the said *Frances*, and took, led, and carried away the said *Frances*, so being the wife of the said *Thomas*, together with the goods and chattels, to wit, twenty caps, twenty shifts, twenty pair of stockings, twenty pair of shoes, twenty aprons, twenty petticoats, two pair of stays, twenty handkerchiefs, twenty pair of ruffles, twenty pair of shift sleeves, twenty gowns, six hats, three cloaks, three mantles, three mantellets, three scarves, three bonnets, ten pair of sheets, ten pair of pillowbiers, six table cloths, twenty napkins, twenty towels, and two hundred ounces of wrought plate of the said *Thomas*, of the value of two hundred pounds, then and there found and kept and detained the said *Frances*, so being the wife of the said *Thomas*, from the said *Thomas* for a long time, to wit, from thence until the exhibiting of the said bill of the said *Thomas*, and converted and disposed of the said goods and chattels to his own use, whereby the said *Thomas*, during all the time aforesaid, lost and was deprived of the benefit and service, and the aid, fellowship, comfort,

The Modern Practice of the

fel, society, and assistance of his said wife; and which he ought, during all that time, to have had and enjoyed with his said wife: AND ALSO, for that the said *William*, on the said day of in the year aforesaid, with force and arms, assaulted the said *Frances*, then and still being the wife of the said *Thomas*, and took, led, and carried away the said *Frances*, so being the wife of the said *Thomas*, and kept and detained the said *Frances*, so being the wife of the said *Thomas*, from the said *Thomas*, for a long time, to wit, from thence until the exhibiting of the bill of the said *Thomas*, whereby the said *Thomas*, during all that time, lost and was deprived of the service, aid, fellowship, comfort, counsel, society, and assistance of his said wife; and which he, during all that time, ought to have had and enjoyed, and otherwise might and would have had and enjoyed with his said wife, and other wrongs, then and there did to the said *Thomas*, to the great damage of the said *Thomas*, and against the peace of our Lord the now King; wherefore he says he is injured, and hath damage to the value of two thousand pounds; therefore he brings his suit, &c.

J. P. attorney for the plaintiff. }

P. C. attorney for the defendant. }

Pledges } *John Doe*
to } and
prosecute, } *Richard Roe.*

Hilary Term, in the 12th year of the
reign of King George the Third.

Let.

Declaration
in Trover.

London, to wit, *E. P.* widow, complains of
J. R. being in the custody of the marshal of the
Marshalsea, &c. For that whereas the said *E.*
on the day of in the year of
our

our Lord one thousand seven hundred and seventy-two, at *London* aforesaid, to wit, in the parish of *St. Mary le Bow*, in the Ward of *cheap*, was possessed of the several deeds, writings, goods and chattels following, to wit, one parchment deed indented, commonly called an indenture of bargain and sale, bearing date the ei hth day of *April*, in the year of our Lord one thousand seven hundred and twenty, made between one *Botler*, of the one part, and one *Knight*, of the other part, whereby the said *Botler* bargained and sold to the said *Knight*, divers messuages, lands, tenements, and hereditaments, with the appurtenances, situate, lying, and being in a certain place called *Austin Friars*, in the city of *London*; one other parchment deed indented, commonly called an indenture of mortgage, bearing date the twenty-fifth day of *September*, in the year of our Lord one thousand seven hundred and eighteen, made between the said *Botler* of the one part, and the said *Knight* of the other part, whereby the said *Botler* granted, bargained, and sold to the said *Knight*, divers other messuages, lands, tenements, and hereditaments, with the appurtenances, situate, lying, and being in the said place called *Austin Friars*, by way of mortgage; ten other parchment deeds indented, being title deeds of and belonging to certain other messuages, lands and tenements, with the appurtenances, situate, standing, lying, and being in *Austin Friars* aforesaid; ten other deeds in writing, being title deeds of and belonging to the said last-mentioned messuages, lands, and tenements; ten other parchment deeds; ten other deeds in writing; two certain paper writings, one thereof purporting, to be a brief or abstract of divers pleadings and depositions taken in a certain cause

cause or suit then lately depending in the court of our Lord the King, of his Chancery at *Westminster*, wherein one

Knight was the complainant, and one

Stone was the defendant, and the other of the said paper writings purporting to be the copy of a decree made in the same cause or suit; twenty other pieces of parchment, and one cart-load of paper, of her the said *E.* of the value of five thousand pounds, and being so possessed thereof the said *E.* afterwards, to wit, on the same day of

in the year of our Lord one thousand seven hundred and seventy-two aforesaid, at *London* aforesaid, in the parish and ward aforesaid, casually lost the said several deeds, writings, goods, and chattels, out of her hands and possession, which said several deeds, writings, goods, and chattels afterwards, to wit, on the same day and year last above said, at *London* aforesaid, in the parish and ward aforesaid, came to the hands and possession of the said *J.* who found the same, YET the said *J.* well knowing the said several deeds, writings, goods, and chattels above mentioned, to be the proper deeds, writings, goods, and chattels of the said *E.* and of right to belong and appertain to her, but contriving, and fraudulently intending craftily and subtilly to deceive and defraud the said *E.* in this behalf, hath not yet delivered to the said *E.* the said several deeds, writings, goods, and chattels above mentioned, or any of them, or any part thereof, or of any of them, although often requested so to do, but the said *J.* to deliver the same to her, has hitherto wholly refused, and afterwards, to wit, on the

day of in the year last aforesaid, at *London* aforesaid, in the parish and ward aforesaid, converted and disposed thereof to his own use, to the said *E.* her damage of five thousand

land

sand pounds, and therefore she brings this
suit, &c.

R. S. for plaintiff, }
for defendant. }

Pledges } John Doe
to } and
prosecute, } Richard Roe.

Hilary Term, 12th George the Third.

Lee.

Middlesex, to wit, *A. B.* complains of *C. D.* Declaration
otherwise called *C. D.* of, &c. (as described in on Bond.
bond on which action brought) being in the custody
of the marshal of the marshalsea, of a plea that
he render to the said *A.* (the penalty) of lawful
money of Great Britain, which he owes to him,
and unjustly detains, for that, to wit, That
whereas the said *C.* on the day of Date of
in the 12th year of the reign of our Lord the bond,
now King, at the parish aforesaid, in the county
aforesaid, by his certain writing obligatory,
sealed with the seal of the said *C.* and now here
shewn to the court of our said Lord the King,
the date whereof is the day and year aforesaid,
whereby he acknowledged himself to be held
and firmly bound to the said *A.* in the said (the
penalty) to be paid to the said *A.* when he should
be thereto afterwards required, yet the said *C.*
although often requested, &c. the said (the
penalty) to the said *A.* hath not yet paid, but to
pay the same to the said *A.* he the said *C.* hath
hitherto altogether refused, and still doth refuse,
wherefore the said *A.* says he hath received da-
mage

The Modern Practice of the
mage to the value of 20l. and therefore brings
this suit, &c.

L. F. for the plaintiff, }
for the defendant. }

Pledges } John Doe
to } and
prosecute, } Richard Roe.

Trinity Term, in the 12th year of the
reign of King George the Third.

Lee.

Declaration
on bail-bond
against one of
the Bail.

Middlesex, to wit, Thomas M. and John H.
assignees of J. W. Esq; and F. B. Esq; sheriff of
the county of Middlesex aforesaid, according to
the form of the statute in such case made and
provided, complain of Edward B. being in the
custody of the marshal of the Marshalsea of our
Lord the now King, before the King himself,
of a plea that he render to them, the said Thomas
and John assignees as aforesaid, forty pounds of
lawful money of Great Britain, which he owes,
and unjustly detains from them, for that whereas
they the said Thomas and John, after the first day
of Trinity Term, in the year of our Lord one
thousand seven hundred and six, to wit, on
(time bill of Middlesex was sued out) the
day of in the 12th year of the reign of
his present Majesty, sued and prosecuted out of
the court of our Lord the now King, before the
King himself, the said court then and still being
held at Westminster, in the said county of Mid-
dlesex, a certain writ of our Lord the now King,
called a *testatum capias ad respondendum*, at the
suit of the said Thomas and John, against one
William M. late of Westminster aforesaid, in the
said county of Middlesex, merchant, directed to the

the then Sheriff of the said county of *Middlesex*, whereby our said Lord the now King commanded the then sheriff, that he should take the said *William M.* called in the said writ by the name of *William M.* late of *Westminster*, in the county of *Middlesex*, merchant, if he should be found in his, the said Sheriff's bailiwick, and him safely keep, so that he might have his body before our Lord the King, from (*here insert return of testatum*) wheresoever our said Lord the King might then be, in *England*, to answer to the said *Thomas* and *John* of a plea, That whereas, &c. (*here insert declaration in original action*) to the damage of the said *Thomas* and *John* of 40 l. as it was said, and that the said then sheriff should have then there that writ, upon which said writ was an indorsement requiring bail from the said *William* for thirty pounds, by virtue of an affidavit of the cause of action of the said *Thomas* and *John* in that behalf, filed of record in the said court of our Lord the now King, before the King himself, according to the form of the statute in such case made and provided, which said writ so indorsed as aforesaid, afterwards and before the return thereof, (that is to say) on day of in the year of our Lord within the said Sheriff's bailiwick, to wit, at *Westminster* aforesaid, was delivered to the said *J. W.* and *F. B.* then and until, and at and after the return of the said writ, being Sheriff of the county of *Middlesex* aforesaid, to be executed in due form of law, by virtue of which said writ, the said *J. W.* and *F. B.* so being Sheriff of the county of *Middlesex* as aforesaid, afterwards and before the return of the said writ, to wit, on the said day of (*the day of arrest*) in the year last above mentioned, within the said Sheriff's bailiwick, to wit, at *Westminster* aforesaid, took and arrested the said *William M.* by his body, and then and there had him in custody of

The Modern Practice of the

of the said sheriff, at the suit of the said *Thomas* and *John*, by virtue of the said writ, and the said *William*, by virtue of the said writ, being so arrested, and in custody of the said sheriff, the said sheriff of the said county of *Middlesex*, took bail for the appearance of the said *William*, at the return of the said writ, according to the exigency thereof, and on that occasion, the said *Edward* as bail or surety for the said *William* afterwards, to wit, on the same day of (date of bail-bond) in the year last above mentioned, to wit, at *Westminster* aforesaid, by his certain writing obligatory, commonly called a bail-bond, sealed with his seal, and to the court of our said Lord the King, before the King himself now here shewn, the date whereof is the same day and year last above mentioned, became held and firmly bound to the said *J. W.* and *F. B.* as sheriff of the said county of *Middlesex* aforesaid, by the name of *J. W.* Esq; and *F. B.* Esq; sheriff of the county aforesaid, in the said sum of forty pounds of good and lawful money of *Great Britain*, to be paid to the said sheriff, or his certain attorney, executors, administrators, or assigns, when he the said *Edward* should be thereunto afterwards requested under this condition, that if the said *William M.* did appear before the Lord the King, (here insert return of writ, wheresoever the King should then be in *England* to answer to the said *Thomas* and *John*, of a plea of trespass on the case, to the damage of the said *Thomas* and *John* of forty pounds, then the said obligation to be void and of no force, otherwise to stand and remain in full force, vigour, and effect, as by the said obligation and condition thereof, relation being thereunto had, will more fully and at large appear, and the said *Thomas* and *John*, assignees as aforesaid, further say, that the said *William* did not appear before the Lord the King at *Westminster*,

minster, (here insert return of writ), mentioned in the said condition, according to the tenor thereof, whereby the said writing obligatory became forfeited, and the aforesaid *J. W.* and *F. B.* so being sheriff of the county of *Middlesex* as aforesaid, afterwards and before the payment of the said forty pounds, contained in the said writing obligatory, or of any part thereof, to wit, on

day of in the year 1772,

(viz. date of assignment) to wit, at *Westminster* aforesaid, at the request and costs of the said *Thomas* and *John*, the plaintiffs in that suit, according to the form of the statute, in such case made and provided in due manner, assigned to the said *Thomas* and *John*, the said writing obligatory, by then and there indorsing the said assignment on the said writing obligatory, and attesting the same under the seal of office of the said sheriff of the county of *Middlesex* aforesaid, in the presence of two credible witnesses, as by the said assignment indorsed on the said writing obligatory, and duly stamped before the exhibiting the bill of the said *Thomas* and *John*, and to the said court of our said Lord the King, before the King himself, now here shewn, the date whereof is the same day and year last aforesaid, more fully appears, by reason of which said premises, and by force of the statute in such case made and provided, an action hath accrued to the said *Thomas* and *John*, assignees of the aforesaid *J. W.* and *F. B.* sheriff of the county of *Middlesex* aforesaid, to demand and have of the said *Edward*, the said forty pounds above demanded, yet the said *Edward* (although often required) hath not yet rendered the said forty pounds, or any part thereof, to the said *J. W.* and *F. B.* before the said assignment, or to the said *Thomas* and *John*, since the said assignment, or to either of them,

K

but

The Modern Practice of the

but he to do this hath hitherto wholly refused, and still refuses to render the same, or any part thereof, to the said *Thomas* and *John* assignees as aforesaid, to the said *Thomas* and *John*, assignees as aforesaid, their damage of forty pounds; and therefore they bring their suit, &c.

E. F. for the plaintiff, }

R. R. for the defendant. }

Pledges } *John Doe*
to } and
prosecute } *Richard Roe.*

Same declaration against principal, leaving out the words *as bail or surety for the said William.*

**Hilary Term, in the 12th Year of the
Reign of King George the Third.**

Lee.

Declaration
by original
in case by the
indorsee
against the
acceptor of a
bill of ex-
change.

London, to wit, *C. D.* late of *London*, Gentleman, was attached to answer to *A. B.* in a plea of trespass on the case, &c. and thereupon the said *A. B.* by *R. R.* his attorney, complains that, WHEREAS one *R. S.* on the fourteenth day of *February*, in the year of our Lord one thousand seven hundred and seventy, at *London* aforesaid, to wit, in the parish of *St. Mary-le-Bone*, in the ward of *Cheap*, made his certain bill of exchange in writing, subscribed with his own proper hand, according to the custom of merchants from time immemorial, used and approved of, and the said bill bearing date the same day and year, and then and there directed to the said *C. D.* and by the said bill required him, the said *C.* six weeks after date to pay to him, the said *R. S.* or his order, fifty pounds for value received, and place same to the account
of

of him the said R. S. which said bill afterwards, to wit, on the same day and year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, was shewn and presented to the said C. for his acceptance thereof, and the said C. then and there, according to the custom of merchants, accepted the said bill of exchange, and the said sum of money in the said bill of exchange being wholly unpaid, he the said R. S. afterwards, and before the time limited for the payment thereof, to wit, on the same day and year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, indorsed the said bill with his own proper hand thereunto subscribed, and by that indorsement appointed the contents of the said bill to be paid to the said A. for value received, and then and there delivered the said bill to the said A. so indorsed as aforesaid, of which said premisses the said C. afterwards, to wit, on the same day and year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, had notice, and by reason of the premisses, and by force of the custom of merchants, the said C. became liable to pay to the said A. the said sum of money specified in the said bill, according to the tenor and effect of the said bill, and his acceptance thereof, as aforesaid; and being so liable, the said C. in consideration thereof, afterwards, to wit, on the same day and year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, undertook, and to the said A. then and there faithfully promised to pay to him the said sum of money specified in the said bill, according to the tenor and effect of the said bill, and of his acceptance thereof as aforesaid: AND WHEREAS also the said C. afterwards, to wit, on the same day and year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, was indebted to the said A. in other fifty pounds of lawful money of *Great Britain*,

The Modern Practice of the

for so much money by the said *A.* to and for the use of the said *C.* at his special instance and request, before that time paid, laid out, and expended; and being so indebted, the said *C.* in consideration thereof afterwards, to wit, on the same day and year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, undertook, and to the said *A.* then and there faithfully promised, that he the said *C.* would pay to the said *A.* the said fifty pounds last mentioned, when thereunto afterwards he should be requested: AND WHEREAS also the said *C.* afterwards, to wit, on the same day and year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, was indebted to the said *A.* in other fifty pounds of lawful money of *Great Britain*, for so much money by the said *C.* before that time had and received to the use of the said *A.* and being so indebted, the said *C.* in consideration thereof afterwards, that is to say, on the same day and year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, undertook, and then and there faithfully promised the said *A.* that he the said *C.* would well and truly pay the said fifty pounds last mentioned to the said *A.* when he the said *C.* should be thereunto afterwards requested: NEVERTHELESS, the said *C.* not regarding his said several promises and undertakings so made in form aforesaid, but contriving, and fraudulently intending to deceive and defraud the said *A.* in this behalf, hath not paid to him the said several sums of money, or any of them, or any part thereof, (although so to do, the said *C.* afterwards, to wit, on the first day of *April*, in the year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, was requested by the said *A.*) but the said *C.* to pay the same to him, hath hitherto refused, and still refuses, to the damage
of

of the said *A.* of sixty pounds; and therefore he brings suit, &c.

Note,—*The declaration by original bath no pledges.*

Michaelmas Term, in the 12th year of the reign of King George the Third.

Lee.

Middlesex, to wit, *A. B.* complains *C. D.* being Declaration in the custody of the marshal of the *Marshalsea* on a judgment recovered, of our Lord the now King, before the King himself, of a plea that he render to the said *A.* sixteen pounds of lawful money which he owes to, and unjustly detains from him, FOR THAT WHEREAS the said *A.* heretofore, that is to say, in *Trinity Term*, in the eighth year of the reign of our Lord the now King, in the court of our said Lord the now King, before the King himself here, (the said court then and still being held at *Westminster*, in the county of *Middlesex* aforesaid), by the consideration and judgment of the said court recovered against the said *C.* by the name of *C. D.* the said sixteen pounds above demanded, and which said sum was then and there in and by the said court of our Lord the King, before the King himself, here adjudged to the said *A.* for his damages which he had sustained, as well on occasion of the not performing of certain promises and undertakings then lately made by the said *C.* to the said *A.* as for his costs and charges by him laid out about his suit in that behalf, whereof the said *C.* has been convicted, as by the record and proceedings thereof still remaining in the said court of our said Lord the now King, before the King himself, at *Westminster* aforesaid, more fully appears, which said judgment still remains in the said court in its full force, strength, and effect,

The Modern Practice of the

effect, not in the least reversed, annulled, set aside, paid, satisfied, or discharged, and the said *A.* hath not as yet obtained any execution of his aforesaid judgment, whereby an action hath accrued to the said *A.* to demand and have of and from the said *C.* the said sixteen pounds above demanded, that is to say, damages, costs, and charges aforesaid, in form aforesaid recovered, to wit, at *Westminster* aforesaid, yet the said *C.* (although often requested, &c.) hath not as yet paid the said sixteen pounds above demanded, or any part thereof, to the said *A.* but he to pay the same, or any part thereof, to the said *A.* hath hitherto wholly refused, and still refuses so to do to the said *A.* his damage of twenty pounds, and therefore he brings his suit, &c.

R. R. for the plaintiff,
for the defendant. }

Pledges } *John Doe*
to } and
prosecute } *Richard Roe.*

Directions for paying Money into Court.

It must be done by motion after declaration delivered, and before defendant pleads. It is a motion of course, for which you pay counsel 10s. 6d. to move it, and give him a note of the money you intend to pay in, and court directs rule thereon, which must be drawn up by *Mr. Cooper*; pay for same 5 s.; take rule to *Mr. Heberden*; pay him the money you moved to pay in; if under 10 l. his fee is 2 s. for every greater or lesser sum than 100 l. after the rate of 20 s. for every hundred pounds.

After

After money paid in, make copy of rule, and serve same on plaintiff's attorney, and deliver him at same time plea, *general issue*; if he accepts the money paid in full discharge of the suit, he is intitled to costs till time money paid in, to obtain which, he must get master's appointment on rule; serve same on attorney on the other side, and tax costs.

If costs not paid on taxation, plaintiff must proceed on suit, and cannot move for attachment. *Strange 1220.*

It is very necessary for defendant to take care that he pays sufficient into court, as his costs in the event of suit depend wholly on this circumstance.

If plaintiff will not accept the sum paid into court in full discharge of his demand, he may receive same of Mr. Heberden in part of his demand, and proceed to trial; but if he does not recover above that sum, he will be non suited, and must pay costs to defendant.

Practical re-

Money cannot be paid into court in *trover* for goods, but for money may. *Strange 1191.*

On ejectment brought by mortgagee, mortgagor may pay principal interest and costs into court, and obtain rule to stay proceedings. *Strange 413.*

Money payable by installments upon a lapse of payment, and action brought, court will stay proceedings on the lapse payment, and costs being paid into court; and if on bond, will allow judgment to be signed thereon, with stay of execution till next default, as a collateral security. *Strange 958.*

In special action on the case for damage done to a chaise, money not allowed to be paid into court. *Strange 787.*

At suit of an executor, defendant may pay money into court. *Strange 787.*

On ejectment for non-payment of rent, court will

will stay proceedings on payment of same, and costs. *Strange* 900.

No bringing money into court in debt, unless on bond under the statute 4 & 5 *Ann.*

In an action for dilapidation, money cannot be brought into court, but defendant must tender amends. *Strange* 906.

Money brought into court, cannot afterwards be taken out by defendant, though he gains a verdict. *Strange* 1021.

Court will permit defendant to withdraw general issue on bringing money into court and repleading same, without prejudice to plaintiff's suit. *Strange* 1276.

Rule on paying money into court; that so much as brought into court by defendant shall be struck out of plaintiff's declaration, and if he proceeds in the action, it is at his peril of costs. 2 *Bur.* 1120. 3 *Bur.* 1773.

Oyer.

If plaintiff in declaration makes a *proferit in curia* of any deed, writing, &c. defendant may pray *oyer* thereof, and has the same time to plead after *oyer* delivered as before he demanded same. If defendant in his plea makes a *proferit in curia* of any deed, &c. plaintiff is intitled to *oyer* thereof, and has same time to reply as before he demanded same, plaintiff and defendant are to pay each other as case may be, 4 d. a sheet, besides duty for all copies of deeds, &c. brought into court as aforesaid.

Practical remarks.

Defendant is not bound to plead to declaration by original, till sight of original and copy is delivered him if demanded.

Defendant not obliged to plead, or plaintiff to reply, till *oyer* and copy given. *Strange* 1186.

P L E A S.

P L E A S.

General issue may be entered in Mr. Caley's General plea-book; pay 4d. entering same; or you may *issue*. write it on a treble penny sheet of stamp paper, and deliver it to plaintiff's attorney.

And the said C. by R. R. his attorney, *Non est factum. It is not his deed on bond.* comes and defends the wrong and injury, when, &c. and says that he ought not to be charged with the said debt by means of the said writing obligatory, because he says the said writing obligatory *is not his deed*, and of this he puts himself upon the country.

And says, That he ought not to be charged *By an executor or administrator.* with the said debt, by virtue of the said writing, because he says that the said writing *is not the deed of the said I. R. (the testator)* and of this he puts himself upon the country.

And says, *That he does not owe to the said A. B. the aforesaid twenty pounds, nor any part thereof, in manner and form as the said A. B. above complains against him, and of this he puts himself upon the country.* *Nil debet, he owes nothing. Debt on contract.*

And says, *That he does not owe to our said Lord the King, and the said C. D. who as well, &c. the said fifty pounds, or any part thereof, in manner and form as the said C. D. who as well, &c. complains against him, and of this he puts himself upon the country.* *Nil debet upon a quietum action.*

And says, *That he does not detain from the said E. F. the said ten pounds, or any part thereof, as the said E. F. above complains against him, and of this he puts himself upon the country.* *Non detinet. He doth not detain action of detain in debt.*

And says, *He does not detain from the said G. H. the goods and chattels in the declaration mentioned, or any part thereof, in manner and form* *Non detinet in case.*

form

form as the said *G. H.* above complains against him, and of this, &c.

Nil debet nec detinet. He neither owes or detains.

And saith, *That he does not owe* to the said *I. K.* the said thirty pounds, nor any part thereof, in manner and form as the said *I. K.* hath above declared against him, *nor doth he detain* from the aforesaid *I. K.* the horse (or as case may be) aforesaid, in manner and form as the said *I. K.* has above declared against him, and of this, &c.

Non infregit conventi-
onem. He did not break the covenant in action on case.

And says, *That he did not break the said covenant (or covenants, as case may be, or any one of them)* in the said declaration above specified, in manner and form as the said *L. M.* above thereof complains against him, and of this, &c.

Non assumpt. He did not undertake.

And says, *That he did not undertake and promise*, in manner and form as the said *N. O.* above complains against him, and of this, &c.

Not assumpt. fit by executor or administrator.

And says, *That the said P. Q.* the testator in his life time, did not undertake and promise, in manner and form as the said *R. S.* complains against him, and of this, &c.

Not guilty in case.

And says, *That he is not guilty of the premises* above laid to his charge, as the said *T. V.* above complains against him, and of this, &c.

Not guilty in trespass.

And says, *That he is in nowise guilty thereof*, and of this, &c.

In trespass and assault.

And says, *That he is in nowise guilty of the trespass and assault*, &c.

Special Pleas.

Are divided into two kinds, *viz.* pleas in abatement, and pleas in bar. The order of pleading is first to the jurisdiction of the court: Secondly, to the person of the plaintiff: Thirdly, to the court: Fourthly, to the writ: Fifthly, to the action of the writ: And sixthly, in bar of the action itself. Any of those may

be used as occasion may require, by plaintiff or defendant.

A plea in *abatement* is temporary, and often Plea in a-
dilatory; it is not to destroy the plaintiff's batement,
action, but only to stop the cause a while, till
some defect removed, as a *misnomer*, to cure
which, plaintiff must enter up a discontinuance
by *nil capiat per breve* on the roll, and then
may bring a new action in defendant's right
name.

The plea in *bar* is an objection to plaintiff's Plea in bar.
action, and goes to the matter in demand,
shewing why plaintiff ought not to have same,
and is either peremptory and perpetual; as when
defendant pleads a general release, which de-
stroys plaintiff's action for ever; or temporary,
and bars only for a time, as the plea of *plene*
administravit, which is a good plea in bar until
more effects come into executor's hands.

All special pleas (except the following) are to
be signed by counsel; the usual fee is 10s. 6d.
and if dilatory, an affidavit of the truth an-
nexed, *viz.* *Comperuit ad diem, son assault,*
plene administravit, reius per disceat, nul tiel record,
per minas solvit ad diem, ne unguet executor infra
statem.

London, to wit, And the said John Thomas, who Plea of mis-
is sued by the name of William Thomas, by A. B. nomet.
his attorney, comes and pleads that he was
baptized by the name *John*, to wit, at *London*
aforesaid, in the parish and ward aforesaid, and
by the name of *John* hath always hitherto since
his baptism been called, and known without
this, that he the said *John* now is, or at the
time of the exhibiting of the bill of the said
Adam Williams was, or ever before had been,
or ever since hath been called or known by the
christian name of *William*, as by the bill of the
said *Adam Williams* is above supposed, and this
he

he the said *John* is ready to verify, wherefore he prays judgment of the said bill, and that the same may be quashed, &c.

J. Burland.

Plea of infancy by guardian against action brought by infant without guardian or next friend.

And the said *John*, who is under the age of twenty-one years, by *J. A.* his guardian, by the court of the Lord the King, now here specially admitted, comes and defends the force and injury when, &c. and prays judgment of the bill aforesaid, because he says that he the said *John*, on the day of the exhibiting of the bill aforesaid, was and yet is under the age of twenty-one years, to wit, of the age of nineteen years, and no more, to wit, at *London* aforesaid, in the parish and ward aforesaid, and that the said *James* prosecutes his bill against the said *John*, neither by his next friend nor by his guardian, and that this he is ready to verify, wherefore he prays judgment of the bill aforesaid, and that the same may be quashed, &c.

J. Eyre.

Plea of a judgment recovered in the Exchequer.

And the aforesaid *B.* by *C. D.* his attorney, comes and defends the wrong and injury when, &c. and says that the said *A.* ought not to have or maintain his said action thereof against him, because he says that after the obtaining the said judgment in the said declaration mentioned, and before the exhibiting the same, to wit, in *Hilary Term* now last past, in the court of our said Lord the King, before the Barons of his *Exchequer*, the same court then and still being at *Westminster*, in the county of *Middlesex*, the said *A.* impleaded the said *B.* upon the same judgment for the said sixty pounds, in the said declaration mentioned, and afterwards in that same term, the

the said *A.* by the consideration of the same court, recovered against the said *B.* the said sixty pounds in the said judgment mentioned, as also 56s. and 8d. which were adjudged to the said *A.* for his damages which he had sustained by reason of the detaining the said debt whereof the said *B.* was convicted, as by the record thereof remaining in full force and effect, in the said court of our said Lord the King, of his Exchequer, more fully appears, and this he is ready to verify by the said record, with this, that the said *B.* will verify that the said sixty pounds in the said record mentioned, and the said sixty pounds in the said declaration mentioned, are one and the same sums, and not other or different, wherefore he prays judgment, if the said *A.* ought to have his said action therefore against him, &c.

J. Eyre.

And the said *B.* by *C. D.* his attorney, comes Plea plene and defends the wrong and injury when, &c. ^{administra-} and says that the said *A.* ought not to have or ^{vit.} maintain his said action thereof against him the said *B.* because he says that the said *B.* hath fully administered all and singular the goods and chattels which were the goods and chattels of the said *E. F.* at the time of his death, in his hands to be administered; and that he the said *B.* has not, nor at the time of exhibiting the bill aforesaid, or at any time since, had any goods or chattels which were the goods and chattels of the said *E. F.* at the time of his death, in his hands to be administered, whereby the said *A.* might have been satisfied of the damages aforesaid, or any part thereof, and this he the said *A.* is ready to verify, wherefore, &c.

L.

And

Plea son
assault,

And the said *B.* by *C. D.* his attorney, comes and defends the force and injury when, &c. and as to the coming with force and arms, or whatsoever that is against the peace of our Lord the now King, the said *B.* says that he is not guilty thereof; and of this he puts himself upon the country, and the said *A.* likewise, &c. And as to the residue of the trespass above supposed to be done, the said *B.* says that the said *A.* ought not to have or maintain his said action thereof against him, because he says that the said *A.* at the said time in which the said trespass is above supposed to be done at *Hertford*, in the county aforesaid, with force and arms, &c. made an assault upon the said *B.* and then and there would have beaten, wounded, and ill-treated the said *B.* if he the said *B.* had not then and there presently defended himself against the said *A.* whereupon the said *B.* then and there defended himself against the said *A.* and so the said *B.* says, that the mischief or damage, if any then and there happened to the said *A.* it was on the proper assault of the said *A.* and in the defence of the said *B.* and this the said *B.* is ready to verify, wherefore, &c.

Plea compe-
ruit ad diem
to bail-bond.

And the said *B.* by *C. D.* his attorney, comes and defends the wrong and injury, when, &c. and prays *oyer* of the said writing obligatory, and it is read to him, &c. he also prays *oyer* of the condition of the said writing, and it is read to him in these words, to wit, The condition of this obligation is such, to wit, &c. which being read and heard, the said *B.* says, that they the said *A.* and *H.* ought not to have or maintain their said action against him, because he says, that after the making the said writing obligatory, and before the day of exhibiting the said bill of the said *A.* and *H.* to wit, on *Wednesday* next after fifteen days of *St.*

Hilary

Hilary next ensuing the date of the said writing obligatory in the said condition above named, he the said *B.* in the said condition above named, appeared before our Lord the King at *Westminster*, to answer the said *A.* and *H.* of the said plea of trespass, and also to the bill of the said *A.* and *H.* against the said *B.* for 80*l.* on promise according to the form and effect of the said condition: And this he is ready to verify by the record of that appearance remaining in the court of our said Lord the King, before the King himself, wherefore, &c.

And the said *Joseph* by *A. B.* his attorney, Plea non assumes and defends the wrong and injury when, *sumpsit, & non assumpsit infra sex annos, and a release from drawee before note indorsed by drawee to indorsee.* &c. and says that he did not undertake and promise, in manner and form as the said *Thomas* hath above complained against him, and of this he puts himself upon the country: And for further plea in this behalf, by leave of the court here for this purpose, first had and obtained according to the form of the statute in such case made and provided, the said *Joseph* says that the said *Thomas* ought not to have or maintain his said action thereof against him, because he says that the said *Joseph* did not any time within six years, next before the exhibiting of the bill of the said *Thomas*, undertake and promise in manner and form as the said *Thomas* hath above complained against him, and this he is ready to verify, wherefore he prays judgment, if the said *Thomas* ought to have or maintain his said action thereof against him, and for further plea in this behalf, by like leave of the court here for this purpose, first had and obtained according to the form of the statute in such case made and provided, the said *Joseph* says, that the said *Thomas* ought not to have or maintain his said action thereof against the said *Joseph*, because he says that the said several causes of action in

The Modern Practice of the

the said declaration mentioned, did not, nor did any or either of them accrue to the said *Thomas* at any time within six years, next before the exhibiting of the bill of the said *Thomas*, and this he is ready to verify, wherefore, &c. and for further plea as to the said promise and undertaking, in the said declaration first mentioned, he the said *Joseph* by like leave of the court here, for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said *Thomas* ought not to have or maintain his said action thereof, against the said *Joseph*, because he says that after the making of the said promissory note in the said declaration mentioned, and before any indorsement was made thereof by the said *Mary Rogers*, to wit, on the 11th day of *March*, in the year of our Lord 1758, she the said *Mary*, at *Westminster*, in the county of *Middlesex*, by her certain deed poll then and there made by her the said *Mary*, to the said *Joseph*, (which said deed poll sealed with the seal of the said *Mary*, he the said *Joseph* now brings into court here, the date whereof is the same day and year last aforesaid) did remise, release, and for ever quit claim unto the said *Joseph*, by the name of Lieutenant *Joseph Griffiths*, of his Majesty's navy, his heirs, executors, and administrators, all and all manner of action and actions, cause and causes of actions, suits, bills, bonds, writings, obligatory debts, duties, accounts, sum and sums of money, judgments, executions, extents, quarrels, controversies, trespasses, damages, and demands whatsoever, both in law and equity, or otherwise howsoever, which against the said *Joseph*, she the said *Mary* ever had, and which her heirs, executors, or administrators should or might thereafter claim, challenge, or demand, for or by reason or means of any matter, cause, or thing whatsoever,

from

Date of re-
lease,

from the beginning of the world unto the day of the date of the said deed poll, as by the said deed poll, relation being thereto had, may more fully appear: And the said *Joseph* further says, that at the time of the making the said deed poll by the said *Mary*, the said promissory note mentioned at *Westminster* aforesaid, was in the custody and possession of the said *Mary* not indorsed by her, and this the said *Joseph* is ready to verify, wherefore, &c.

J. Burland.

And the said *Robert*, by *R. R.* his attorney, Plea of ten-comes and defends the wrong and injury when, der. &c. and as to all the said promises and undertakings in the said declaration mentioned, except as to 8l. and 15 s. parcel of the said sum of 9l. 6s. 8d. in the said first promise in the said declaration mentioned, says, That he the said *Robert* did not undertake or promise in manner and form as the said *John* hath above complained against him, and of this he puts himself upon the country: And as to the said 8l. and 15 s. parcel of the said 9l. 6s. and 8d. in the said first promise and undertaking in the said declaration mentioned, he the said *Robert* says, That the said *John* ought not to have his said action maintained against the said *Robert*, to recover any more or greater damages by reason of the not performing of the said first promise and undertaking in this behalf, than the said 8l. and 15 s. because he says, That after the making of the said first promise and undertaking, as to the said 8l. and 15 s. and before the exhibiting of the bill of the said *John*, to wit, on the third day of *November*, in the year of our Lord 1758, at the city of *Exeter* aforesaid, in the county of the same city, the said

Day tender made.

The Modern Practice of the

Robert was ready and willing to pay, and offered to pay to the said *John*, the said sum of 8 l. and 15 s. and then and there tendered the same to him in payment, to receive which of the said *Robert*, he the said *John* then and there wholly refused: And the said *Robert* further says, That he the said *Robert* always from the time of the making of the said first promise and undertaking, as to the said 8 l. and 15 s. hitherto hath been willing and ready to pay the said 8 l. and 15 s. to the said *John*, and the said *Robert* still is ready to pay the same to the said *John*, and now brings the said 8 l. and 15 s. into court, here ready to be paid to the said *John*, if he will accept the same; and this he is ready to verify, wherefore he prays judgment, if the said *John* ought to have his said action maintained against the said *Robert*, to recover any more or greater damages than the said 8 l. and 15 s. in this behalf, &c.

J. Burland.

Note,—The money tendered must be paid to Mr. Heberden, and his receipt for same wrote at bottom of plea, before you leave same in Mr. Benton's office.

Remark.

Pleading issuably, within the meaning of a judge's order, is pleading such a plea as plaintiff may go to trial on. 2 Bur. 782.

Demurrers

Are of two sorts, *viz.* general or special; a general demurrer is in the nature of a dilatory plea, and generally brought by defendant to gain time; it is not to be signed by council: A special demurrer must, and also must contain the

the special matter in declaration to which defendant demurs. A general demurrer is no paper-book, though a special demurrer is.

When, &c. and prays judgment of the said declaration, because he saith, That the said declaration, and the matters therein contained, are not sufficient, in law for the said *James* to have or maintain his said action thereof, against him the said *William*, to which said declaration, the said *William* has no need, nor is he bound by the law of the land in any manner to answer; and this he is ready to verify, wherefore, for want of a sufficient declaration in this behalf, the said *William* prays judgment thereof, and that the said declaration may be quashed, &c.

General demurrer in case.

When, &c. and prays judgment of the declaration afore said, because he says, That the declaration afore said, and the matter therein contained, are not sufficient in law to maintain the action of him the said *Richard* against him the said *Thomas* had, to which the said *Thomas* hath no necessity, nor is obliged by the law of the land to answer, and this he is ready to verify; wherefore, for want of a sufficient declaration in this behalf, the said *Thomas* prays judgment of that declaration, and that the same declaration may be quashed, &c. And for causes of demurrer in law, upon the declaration afore said, the said *Thomas*, according to the form of the statute in such case made and provided, sets down, and to the court here expresses these causes following, to wit, That no town, parish, or place is alledged in the same declaration, where the said *Thomas*, the close afore said, broke or entered, and for that the same declaration is in itself repugnant, contradictory, and wants form, &c.

Special demurrer in trespass.

J. Eyre.
A demurrer

Remark.

A demurrer, containing real matter, is an issuable plea within the meaning of a judge's order for pleading issuably; a sham one is not. 3 Bur. 1788, 1789.

Observations
on special
pleading.

Attornies, by the ancient rules of this court, may make up the issue, and demurrer books themselves in the following cases, *viz.* every issue given on the book side, not guilty to a new assignment; the bar of *son franche* tene-ment, or *comperuit ad diem*, to a sheriff's bond; *nul tiel record* to a *scire facias*, or action of debt upon judgment; a general demurrer to a declaration; an action of covenant whereby the defendant in his bar concludeth to the country; every special *non est factum*; every *son assault demesne*; issues, or demurrers upon writs of error; *scire facias* and *audita querela*; all repleaders, or any matter formally entered on record; in all cases by original or bill special, pleadings to be left with clerk of the papers; Mr. Benton, who makes copies thereof, and when issue is joined thereon in fact, or in law, he makes up the paper-books thereon.

There are two issues arise ultimately from this manner of pleading, *viz.* the issue in law, and the issue in fact: The issue in law is joined upon demurrer, and called the issue on demurrer: The issue in fact is joined where the plaintiff affirms a matter, and the defendant denies the same, which fixes a certain precise point to be tried by a jury: For example, *viz.* plaintiff declares defendant owes him 50l. defendant pleads *nil debet*; now, whether he owes plaintiff any thing or not, is the issue to be tried between the parties by a jury.

The issue and demurrer books made up by plaintiff's attorney, are done in the same manner as those made by clerk of the papers; and the young practitioner may take one of those books as a precedent.

Special

Special pleas and demurrers are to be wrote on treble penny stamp paper. Special pleas (except as before set forth) must be signed by counsel, and left with Mr. *Benton*, clerk of the papers, and not delivered to the attorney on the other side, who makes copies thereof to deliver. Rule, *Trin. 2 James 1. Trin. 16 Car. 2. Mich. 2 W. & Mary.*

By statute 4 & 5 *Ann.* No dilatory plea to be received, unless verified by affidavit.

If you plead specially, you must take notice of trial from delivery of the paper book, though plaintiff don't join in issue till four days after.

Directions for making up paper book on special pleas or demurrers.

Special pleas must be left with Mr. *Benton*; you pay nothing leaving same. On plaintiff's finding a special plea in the office, he must carry a copy of the declaration, on unstamped paper, to the clerk of the papers, who makes up paper book; and on the back of same, plaintiff gives defendant eight days notice of trial, and the clerk of papers gives rule in themargin for defendant to return same to be inrolled in four days; this book must be left with defendant's attorney. Mr. *Benton* charges plaintiff 8 d. *per* sheet for the book, and 4 d. *per* sheet for all pleadings after declaration, together with stamp duty. If defendant don't return same agreeable to rule, sign judgment; if he chuses to return same, he must pay plaintiff's attorney 8 d. *per* sheet for his own pleadings, and 4 d. *per* sheet for plaintiff's entries; and also the charge of declaration, if not paid for before. If defendant's attorney does not proceed to trial, but demurs to replication, he must scratch out his joining issue at bottom of same, and leave a demurrer in the office, and return

The Modern Practice of the

return paper book to plaintiff, with notice on the back, that he hath left a demurrer in the office. On this step being taken by defendant, plaintiff must carry paper book to Mr. *Benton*, who will add thereto defendant's demurrer and plaintiff's joinder in demurrer, then deliver book to defendant's attorney, who is allowed to keep the same but one day; if he returns book in time, and pays for same as before directed, make an *incipitur* on roll, and carry same, with paper book, to Mr. *Caley*, clerk of the judgments, who will enter same. Pay him according to the length of pleadings, and finish the entry of paper book on roll. Get number of roll from Mr. *Phillips*, at Mr. *Tully's* chambers in *Holborn Court, Gray's Inn*, for which he makes no charge; and leave roll, when completed, with him. Move by counsel for a *consilium*; pay him 10 s. 6 d. for motion; which done, draw up rule for same with Mr. *Cooper*, for which pay 4 s.; then apply to Mr. *Benton* to know when the next paper day; advise Mr. *Phillips* thereof, that he may have record in court.

When demurrer is set down for argument with clerk of the papers, pay him 1 s. setting down same; make copies of paper book for the judges on unstamped paper; leave books for the chief and senior judges at their chambers; pay with same 2 s. each to their clerk. Defendant's attorney delivers books to the other two judges in the same manner; if not done within two days of the day of argument, plaintiff must do it for him; and in that case defendant cannot be heard upon the argument.

On the day of argument attend court, give counsel 10 s. 6 d. to move for judgment. When Mr. *Phillips* brings roll into court, and the proper officer calls defendant three times, and on his non-appearance, judgment is given for plaintiff.

plaintiff in demurrer. Get clerk of the papers to mark in the margin of record *read*. Pay for same 1 s. court fees nothing.

When judgment goes for plaintiff, draw up rule for judgment with Mr. *Cooper*; pay for same 4 s. This rule is not served on defendant's attorney; if the action is in case, &c. where damages are uncertain, give notice to defendant's attorney of executing writ of inquiry. If in debt, judgment is final; and you get rule or paper book stamped at the stamp office in *Lincoln's Inn*, with a double half crown stamp. Take papers to Mr. *Benton*, who will tax your costs and mark roll, and then execution may be taken out. If judgment goes for plaintiff on demurrer, before the expiration of notice of trial on plaintiff's paper book, you may execute your inquiry at the end of such notice of trial.

D E M U R R E R S.

If defendant delivers plaintiff a general demurrer to declaration, plaintiff adds a joinder in demurrer, and makes a copy on treble penny stamp paper of declaration, demurrer, and joinder, and delivers paper book so made up to defendant's attorney; for which he must pay plaintiff's attorney 4 d. *per sheet* for the pleadings, besides duty, and then deliver plaintiff a rejoinder in demurrer, who makes up paper book, and proceeds to judgment as on special demurrer. If demurrer book not paid for upon delivery, sign interlocutory judgment, and give notice of executing writ of inquiry. *Trin. W.*

If demurrer contains real ground, it is a temporary bar to action, and plaintiff must take out summons before a judge to amend declaration; if not, carry copy of declaration to Mr. *Benton*, who

The Modern Practice of the

who makes up paper book, and gives a rule for defendant to return same; if returned, and paid for, make an *incipitur* on roll, and proceed to judgment, as directed under the head of *paper books on special pleas*, &c. If neither returned or paid for, judgment is signed of course, and plaintiff may execute his enquiry. If either plaintiff or defendant refuse to reply, rejoin, surrejoin, rebut, or surrebut, apply to Mr. *Benton* for a rule for any of these purposes, for which you pay nothing. These rules must be entered with Mr. *Cooper*; pay for entering 1s. 10 d. and then serve same on party's attorney required to do the act; if not done in time, on a demand being first made in writing, sign a *non prof.* If cause has continued four terms without prosecution before issue joined, a term's notice is required to do all the above matters, unless cause staid by injunction or privilege.

A copy of these rules is served on attorney required to do the act, with title of the term on the top. These rules may be given any time within term, or four days after term ends.

Plaintiff on delivering paper book of demurrer to defendant's attorney, cannot give notice of executing inquiry; but must stay till he has obtained judgment.

Defendant on returning paper book, may waive his demurrer, and give general issue: In this case, plaintiff can only give notice of trial from time defendant pleads general issue.

Plea not put in in time, so that paper book may be delivered in four days after term; yet if delivered by plaintiff's attorney within eight days after term, defendant must receive it, and return it in four days, according to rule, or judgment may be signed against him. But if after the eight days, defendant need not return book till within the first four days of the following term. If it be an issue to be tried at the

the assizes, defendant must return paper book within four days after delivery. Pay for entries and join in the special issue, or give general issue, and take notice of trial, or plaintiff may sign interlocutory judgment the same as if defendant had not pleaded at all. If plaintiff's attorney receives paper book after the usual time, he cannot afterwards sign judgment.

On issues in fact, the four days are exclusive; and on demurrers on issues in law, inclusive.

All special pleadings where plaintiff takes issue on defendant's pleadings, by traverse or demurrer, so that defendant is not let in to allege any new matter, plaintiff may make up paper book without giving rule to rejoin. Paper books on issue joined, and notice of trial given on back, if same afterwards waived by defendant, and general issue pleaded, the same notice as given for special issue serves for general issue. The same doctrine holds where defendant strikes out the *similiter*, and leaves a demurrer in office. If judgment goes for plaintiff, the notice given of trial serves for the writ of inquiry, only defendant must have notice of the hour and place of executing same. Practical remarks.

H. 8. Geo. 1.

Non assumpsit, and the statute of limitations, must be left with Mr. *Benton*. A general demurrer cannot be waived.

In case defendant gives a frivolous demurrer, plaintiff may move court for defendant to abide by same, or plead instantly. If defendant bound by order of judge to plead issuably, he may demur to plaintiff's replication.

Special causes set down for argument, must be entered four days exclusive of the day of argument, and notice given immediately to defendant's attorney. If cause not argued of the term of which entered, it stands over till next term, without fresh entry. *Mich. 1756.*

To plead several matters, no affidavit necessary; but court must be moved, and order drawn

M

The Modern Practice of the

drawn up by Mr. *Cooper*. Defendant's attorney pays for same 4 s.; a copy of which must be served on plaintiff's attorney, and then the plea may be delivered to him, or left in Mr. *Ben-ton's* office, as the case may require.

When defendant has pleaded an issuable plea, and plaintiff don't enter issue the same term, defendant may waive same, and plead anew, or demur, within the first four days of subsequent term, unless general issue. If former judgment of same court pleaded, plaintiff has a right to demand term and number roll; and till given, plea not good.

The statute not necessary to be recited, in pleading a general statute.

The reversal of an outlawry cannot be pleaded twice to the same action.

Infants cannot plead till admitted by guardian, and then must plead their infancy, to avoid an act done by them. 3 *Bur.* 1805.

Tender, a good plea to a *quantum meruit*, and issuable within the meaning of a judge's order. *Str.* 576. *Bur.* 59.

After money accepted by plaintiff on tender, he cannot proceed for damages. 2 *R. Raym* 774.

On a *quantum meruit*, if defendant pleads a tender, and plaintiff makes up issue or paper book, with a general memorandum, so as to refer to a day prior to such tender, court, on affidavit that tender was made before writ taken out, will oblige plaintiff to alter his memorandum according to the fact, that defendant may have the benefit of his tender. *Strange* 638.

On original, defendant on oyer pleading in abatement, writ never returned, such plea will be set aside, unless supported by affidavit. *Strange* 630.

Plea of privilege requires an affidavit to support same. *Strange* 738.

Converture, after action brought, will not abate writ. *Strange* 811.

On tender, defendant must, at his peril of costs, tender enough. *Strange* 916.

An

An issuable plea is such a one as plaintiff can go to trial on. 2 *Bur.* 782.

On original, if defendant pleads in abatement to his description in plaintiff's declaration, if same below his degree, the plea is good, otherwise bad. *Strange* 556.

Court will not allow defendant to plead several matters contradictory in themselves, and which prevent the bringing the cause to issue; but will allow him to withdraw a special plea, in order to plead the general issue. *Strange* 960.

Pleas in abatement, or to the jurisdiction of the court, must be pleaded within the time allowed by the rule, and not after imparlance, unless declaration and rule are not delivered till within the four last days of term; in which case defendant is allowed till the four first days of next term.

On pleas of tender, money must be paid to Mr. Heberden, in same manner as on motion to pay money into court, and his receipt be wrote on the plea before filed. Rule, *Hilary* 5 *Jac.* 1.

A bankrupt pleading a false plea where he is executor or administrator, may subject his estate to the costs of his testator's suit. 3 *Bur.* 1369.

On plaintiff's amending declaration, defendant has two days after amendment to alter his plea, or plead *de novo*.

Pleas in *chief* are not limited to four days, like those in abatement.

Plea of ancient *demesne* is not a plea in abatement, nor within the statute for amendment of the law.

Justification for words cannot be given in evidence, unless pleaded. *Strange* 1200.

Rule on motion for defendant to plead such plea as he will abide by; a copy must be served on his attorney. *Strange* 1234.

Oyer not necessary to be inserted in plea. *Strange* 1241.

The Modern Practice of the

Nil debet, to a former action depending on a *qui tam* cannot be pleaded, being excepted out of the act for amending the law. *MS. Reports.*

Debt on bond, defendant cannot plead in bar, that bond was executed by another person jointly with him, but must plead it in abatement of the action. *MS. Reports.*

Mutual Debts.

Where mutual debts between plaintiff and defendant, and defendant's demand more than covers that for which action brought, it is usual to plead the general issue, and a notice of set off. The plea and notice of set off, must be wrote on a treble penny sheet of stamped paper, and delivered to plaintiff's attorney. The person who delivers it must keep an exact copy on treble penny stamped paper, to produce and prove on trial (*if necessary*).

An action brought where there are mutual debts, if defendant's demand not sufficient to cover plaintiff's, his attorney must move to pay so much money into court, as, with demand, will cover same; and on serving plaintiff's attorney with rule, must give him a plea of the general issue, and notice of set off; copy to produce and prove as before.

In the notice of set off, the usual way is for defendant to traverse the counts in plaintiff's declaration, according to the nature of the case.

K. B.

Michaelmas Term, in the 12th year of the reign of King George the Third.

Lee.

A. B.

against

C. D.

General issue.

And the said A. by W. F. his attorney comes and defends the wrong and injury when, &c.

And

And saith, that he did not undertake and promise in manner and form as the said *T. A.* above complains him: And of this he puts himself upon the country.

To Mr. C.

S I R,

Take notice that the above named defendant intends to give in evidence, and insist upon at the trial of this cause, that the above named plaintiff, at the time of his exhibiting his bill against the said defendant in this cause, was, and still is indebted to the said defendant in forty pounds of lawful money of *Great Britain*, for divers goods, wares, and merchandizes of the said defendant, by the said defendant, to the said plaintiff, at his special interest and request, sold and delivered: AND ALSO in forty pounds of like lawful money, for so much money by the said defendant, to and for the use of the said plaintiff, at his like special instance and request, paid, laid out, and expended: AND ALSO, in other forty pounds of like lawful money, for so much money by the said plaintiff to the use of the said defendant had and received: And that the said several sums of money, or so much thereof as may be necessary, will be set off in satisfaction of and against the money supposed to be due to the said plaintiff for the matters contained in the declaration in this cause, according to the form of the statute in such case lately made and provided. Dated the third day of *December*, one thousand seven hundred and sixty-three. Your's, &c.

To Mr. T. C. attorney for
the plaintiff in the above
cause: These,

W. F. defendant's attorney.

M 3

Indorse

The Modern Practice of the
Indorse on back,
Michaelmas Term, 12th George the Third.
Lee.

A. }
against } Plea and notice set off.
B. } R. R. defendant's attorney.

INTERLOCUTORY JUDGMENT.

Defendant having neglected to plead, or on special demurrer, same being over-ruled, and judgment ordered for plaintiff, sign interlocutory judgment in manner following.

Take a sheet of treble penny stamp paper, and write about six lines of your declaration thereon; and on a *K. B.* roll, carry declaration with judgment paper and roll to Mr. Caley, who signs judgment; pay him for same according to length of proceedings. This done, give defendant's attorney notice in writing of executing writ of inquiry in form following.

Note.

If defendant lives in *London* or *Middlesex*, or within forty miles of *London*, eight days notice to be given exclusive of the day of notice; if above that distance, fourteen days exclusive of the same.

In the *King's Bench.* A.
against
B.

Mr. C.

Notice of
inquiry.

Take notice that a writ of inquiry of damages will be executed in this cause, on day of (instant, or next, as case may be) between the hours of ten and twelve of the clock in the forenoon of the same day, at the *Three Tuns* in *Brook Street*, *Holborn*, in the county of *Middlesex* (if action brought in *Middlesex*) if in *London*, at *Guildhall* in the city of *London*; if in any other city or county, at the place, describing the same, where the sheriff of such city or county usually executes his

his writs of inquiry. Dated day of
1772.

Your's, &c.

To Mr. C. defen- }
dant's attorney,
These. }

W. G. plaintiff's
attorney.

If plaintiff finds himself incapable of proving his case, through want of a witness, or for any other cause, he must countermand the notice of executing writ of inquiry: This must be done two days exclusive of the day of giving such notice, before such inquiry is to be executed.

In the King's Bench.

A.
against
B.

Mr. C.

Take notice that I hereby countermand the notice of executing the writ of inquiry in this cause, given you day of Countermand of inquiry.
Dated day of 1772.

Your's, &c.

To Mr. C. defen- }
dant's attorney,
These. }

W. G. plaintiff's
attorney.

George the Third, &c. To (here insert witnesses names, there may be four in each writ) We command you, and every of you, that setting aside all and singular business and excuses whatsoever, you be, and every one of you, be in your proper persons before (in Middlesex) John Wilkes and Frederick Bull, Esqrs. Sheriff of Middlesex, on (the day of the week, month, and year, inquiry is to be executed) at the Three Tuns in Brook Street, Holborn, in the county aforesaid; (in London, say) before same sheriff, (calling them sheriffs of the city of London) (on day, month, and year, inquiry to be executed); if to be executed in the country, insert (sheriff or undersheriff's name, with same directions as to day, time, and place as before) there to testify the truth

The Modern Practice of the

truth of all and singular those things, according to the best of your information and knowledge, which you, or any of you know, in a certain cause now depending in our court, before us, between *A. B.* plaintiff, and *C. D.* defendant, of a plea of trespass on the case (*or as the nature of the action is*) on which said plea our certain writ of inquiry of damages hath been sent by us out of our said court, and directed to the said sheriff, (*here insert name of sheriff, according to place where inquiry to be executed*), then and there in form of law to be executed before the said sheriff: And this you, nor any of you, shall in nowise omit, under the penalty of 100*l.* Witness *William Lord Mansfield at Westminster*, (*here insert teste, viz. if in term, first day of term; if in vacation, last day of preceding term*) in the 12th year of our reign. *Lee.*

*Indorsed with attorney's name who
sues out same.*

This writ must be ingrossed on a 2 s. piece of stamped parchment. Get same at a law stationer; pay him 2 s. 2 d. This writ must be signed and sealed; pay signing 1 s. 8 d. sealing 7 d.

Precipe for
subpœna.

*London, to wit, subpœna to testify on inquiry
for A. B. plaintiff, and C. D. defendant.*

R. R. attorney.

Nov. 1772.

Mr. R. T.

Form of
subpœna
ticket for
witnesses on
inquiry.

By virtue of a writ of *subpœna* to you directed, and herewith shewn, you are personally to be and appear before (*the sheriff or under-sheriff, calling them by name, as the case may be, on the day inquiry is to be executed, between the hours notice is given for, and the place where, as described in such notice*) then and there to testify the truth, according to your knowledge, on a certain writ
of

of inquiry of damages, to be then and there executed, in a certain cause now depending between *A. B.* plaintiff, and *C. D.* defendant, in a plea of trespass on the case (*or as the nature of the action is*) on the part of the plaintiff or defendant, (*as the case is*): And this you are not to omit, upon pain of 100 l. Dated the

day of _____ in the 12th year of the reign of our Sovereign Lord George the Third, by the grace of God, &c. And in the year of our Lord 1772.

R. R. plaintiff or defendant's attorney,
(*as the case is*). }

By the Court.

You pay witness 1 s. when you deliver him this ticket, and shew him original *subpoena*. It must be personally served.

George the Third, &c. To the sheriffs of London, (*or any other city or county, as case may be*) greeting: WHEREAS *A.* lately in our court, before us at *Westminster*, by bill, without our writ, impleaded, *B.* being in the custody of our marshal, before us: THAT WHEREAS (*here insert declaration verbatim from the word whereas to damages, &c.*) and thereupon he brought his suit, &c. and such proceedings were had in our court before us, that the said *A.* ought to recover against the said *B.* his damages, by occasion of not performing the said promises and undertakings; but because it is not known to our court before us, what damages the said *A.* hath sustained by occasion of the premises, we command you, that by the oath of twelve good and lawful men of your bailiwick, you diligently inquire what damages the said *A.* hath sustained, as well by occasion of the premises, as for his costs and charges by him about his suit in this behalf expended, and that ye send the inquisition which ye shall take thereof

Form of inquiry by bill.

to us at *Westminster*, (here insert the return, it may be on the day of executing the inquiry, or some return after), under your seals, and the seals of them by whose oath ye shall take that inquiry, together with this writ. Witnesses *William Lord Mansfield*, at *Westminster*, (the first day of term, if in term, and the last day of the preceding term, if in vacation), in the 12th year of our reign. *Lee.*

Attorney's name to be indorsed.

This writ must be ingrossed on a double twelve-penny piece of stamped parchment.

Inquiry is not signed; sealing 7 d. Two days before the time of executing same, if in *Middlesex*, carry inquiry to the sheriff's office in *Furnival's Inn*; if in *London*, to either of the *Compters*, and sheriff will cause a jury to be returned. On the day of executing inquiry, attend with your witnesses at the time and place appointed by your notice, open plaintiff's case in a short manner to the sheriff and jury: Swear witnesses, and examine them to the points to be proved, and jury, if satisfied with the proofs, will give a verdict for the plaintiff. In *London*, pay the sheriff for executing inquiry 1 l. 7 s. 4 d. and for every witness examined 4 d. a-piece. In *Middlesex*, and most other counties, the sheriff's charge is 1 l. 10 s. 6 d.

Practical remarks.

If any witness that you want to examine, refuses to attend, take out a *subpoena*, and serve him or them with a copy thereof, at the same time giving each a shilling with their ticket, as in cases of trial; and if they do not then attend, they are liable to the penalty of 100 l. each.

After writ returnable, call on sheriff, and he will return you the writ, with his inquiry thereon; when you get same stamped on the back thereof for judgment, with a double half crown stamp at the stamp office.

You

Court of King's Bench.

131

You cannot give a rule for judgment with Mr. Cooper, for which you pay 1 s. 10 d. till the day of return of inquiry.

It is a four day rule, exclusive of the day; Note, and if Sunday intervenes, it is no day in the rule. When rule is out, take your inquiry and papers in the cause to Mr. Benton, the deputy master, and he will tax you costs, and sign final judgment; and then execution may be taken out against defendant.

The same notice of executing and countermanding notice of inquiry as before, only say under the words *In the King's Bench*, by original. Proceedings on interlocutory judgment by original.

George the Third, &c. To the sheriffs of London, merchant, was attached to be in our court before us to answer to A. in a plea, THAT WHEREAS (*here insert declaration by original verbatim, to the words damage, &c.*) of the said A. forty pounds, as it is said, and it is in such manner proceeded in our said court before us, that it is considered by the said court, that the said A. ought to recover his damages by reason of the premises against the said B. but because our court before us do not know what damages the said A. hath sustained by reason of the premises aforesaid: THEREFORE we command you, &c. (*as in former writ of inquiry to the word us. Here insert an original return*) wheresoever we shall then be in England under your seals, and the seals of those by whose oath you shall take that inquisition, together with this writ. Witness William Lord Mansfield, at Westminster, &c. (*as in former writ.*)

Adams.

Attorney's name to be indorsed.

This writ is not signed; sealing 7 d.

1

The

The Modern Practice of the

The same proceedings to be had in executing and bringing this writ to final judgment, as on inquiry by bill.

Practical remarks.

Inquiry may be executed on the day of return, and rule for judgment may be given on the afternoon of same day.

Either party may have counsel on executing writ of inquiry. 2 *Lord Raym.* 1449.

Court on motion will set aside verdict on inquiry, where the jury, through mistaking a point of law, give too small damages, or where plaintiff is surprized with a defence, and not prepared to prove his whole demand; but in this last case, only on payment of costs. *Strange* 425, 515.

Court will give costs, if inquiry not executed according to notice, unless countermanded in due time. *Strange* 728.

Inquiry may be executed before the Chief Justice in court, or at *nisi prius*, and if plaintiff cannot prove his case through the absence of a material witness, court will adjourn over the execution of the writ. *Strange* 853.

If inquiry executed, and afterwards lost, should same be wanted in a court of equity, court on motion will direct a new writ and inquiry, and the master to indorse the costs taxed thereon, in case it manifestly appears such former inquiry was really executed. 2 *Strange* 1077.

Where a term's notice of trial is required, the same notice of inquiry is required. 2 *Strange* 1100.

If court on motion sets aside inquiry for irregularity, a new writ must be sued out and executed *de novo*.

Inquiry must be executed within the hours mentioned in the notice given for that purpose, or it may be set aside on motion, and affidavit of the fact for irregularity.

SUMMONS

SUMMONS *before a Judge.*

To be taken out before any judge of court How to be
 action is brought in; pay for same, and renewals, taken out,
 in term or vacation, 1s. each: If taken out by and what
 an attorney of the court, (where he is defend- paid for
 ant) judge's clerk generally charges nothing. same.

If taken out in time, it is a stay of proceed- Stays pro-
 ings, (pending summons) if otherwise not, as ceedings.
 judge is not supposed to know state of cause on
 which summons is taken out, but takes it on
 your representation.

A true copy of all summonses must be served Must be ser-
 on plaintiff or defendant's attorney, (*as the case* ved on plain-
requires) and the party who serves same, must read tiff's or de-
 it over with original, to be able to swear to ser- endant's at-
 vice, if necessary. torney.

If defendant hath no attorney, copy must be
 served on him, or left for him at his last place of
 abode.

A summons for six o'clock, or any other given Time of
 hour, attorney who takes out same must wait attendance,
 at judge's chamber till after seven o'clock. If renewals,
 not attended by attorney on the other side, and order
 summons must be renewed, and marked second thereon.
 summons, and served and attended as before; if
 not attended, renew same, and mark it third
 summons, and serve it; if third summons is not
 attended, you make affidavit (*vide end of the book*)
 of having taken out, served, and attended the
 three summonses which you deliver to judge's
 clerk, and he gives you an order for the matter
 applied for.

Orders on summonses must be copied and
 served on plaintiff's attorney as before di-
 rected.

You pay judge's clerk for same in all cases,
 2s. each.

N

If

Consequence
of non-at-
tendance.

If summons is for any matter or thing which the suitors of the court are by the rules and orders thereof bound to obey, the non-attendance of the attorney, or the non-compliance of his client, will subject them (on plaintiff's attorney moving court to make judge's order a rule of court) to an attachment of contempt.

Cases reliev-
able by sum-
mons.

To pay debt and costs, to be taxed by master, (on this you must agree upon the debt).

For common bail, instead of special bail, this must be supported by affidavit.

For time to put in bail above.

To add bail,

To justify,

To plead.

In these cases, if in time, judge will make an order on terms, viz.

Pleading issuably, rejoining gratis, taking short notice of trial; the same of inquiry (if necessary within term).

Judge will not bind defendant on first summons to all the above terms, unless the state of the cause requires it.

In all cases in a town cause, where defendant applies to judge for time to put in, add, or perfect bail, or for time to plead, judge will oblige defendant's attorney to enter into an order to plead an issuable plea.

If defendant afterwards pleads a dilatory plea, or such a one as plaintiff cannot try the law or fact upon, plaintiff may sign judgment as if no plea had been pleaded, and give notice of executing inquiry. On defendant's putting in a dilatory plea with clerk of the papers, if plaintiff makes up paper book, this is a waiver of the agreement between plaintiff and defendant's attorney on judge's order, whereby plaintiff loses his remedy thereon, and must then proceed on paper-book, as if no such order had been made.

If

If defendant hath had time, and is not under all the terms aforesaid, judge will grant him further time, but so that plaintiff is not hindered trying cause the term writ is returnable, provided plaintiff could have tried it, had no time been granted to defendant.

In country causes, where cause of action is local, and cannot be tried but at the assizes, judge will be governed in his indulgence on all these matters, according to the time there is to come till the assizes, so that plaintiff be not prosecuted thereby from trying his cause at the then next assizes, if he should think proper.

If the parties plaintiff or defendant live in the country, and the cause of action is transitory, the same doctrine is held by judge as in a town cause, allowing for the difference of notices to bring same to issue. Note.

Mistakes in declaration or issue, (*clerical, or otherwise*) may be repaired by summons; sometimes it gives defendants an imparlance, and sometimes subjects parties applying for relief to costs. It being an established practice of this court, that all proceedings, while on paper, are amendable by summons, except declaration in ejectment, which court considers as first process of such action. *2 Strange* 1211.

Summons may be taken out to stay proceedings on bail-bond, if before plaintiff hath lost a trial, otherwise neither judge or court on motion, will grant relief therein. Judge will oblige defendant to perfect his bail before he will make any order; and then will oblige defendant to pay costs to be taxed by master; receive a declaration in the original action; plead to issue; take short notice of trial, so that the issue may be tried the same term. If plaintiff hath lost a trial, bail must consent that judg-

ment may be entered against them on the bail bond for plaintiff's security.

If defendant doth not pay costs when taxed, plaintiff may proceed on bail-bond, as if no order had been made.

To shew
cause, &c.

Summons may be had at any time from commencement of suit to issue joined, by plaintiff or defendant, to shew cause why all proceedings should not be stayed on payment of costs to be taxed by master. If by defendant for payment of debt and costs. If party applying doth not pay costs when taxed, or at the time allowed by order, the other side may proceed as if no such order had been made.

Defendant on this summons may get five or six days to pay debt and costs, but judge will tie him down to terms if early in the cause, so that plaintiff may not be delayed in trying his cause, on defendant's neglect to comply with order.

For superse-
deas.

Summons for supersedeas, on plaintiff's not declaring against prisoner in two terms after return of writ; this is peremptory on first summons, and on plaintiff's neglect to attend same, judge will make an order to discharge prisoner.

For fees and
disburse-
ments.

Summons for attorney to deliver in to his client a bill of his fees and disbursements. This summons should have the name or names of the causes in the margin. Judge will not make order thereon till third summons. If judge's order made a rule of court, and then on service not complied with by attorney, attachment of contempt will issue against him, and so in all matters by summons, where judge cannot make an order *ex parte*, and where it is the duty of the attorney to attend to enable him to aid the summoner.

If

If attorney attends on this summons, judge will make an order for him to deliver his bill in a reasonable time, if not done liable to attachment as before.

Bill being delivered, get summons to shew ^{To shew} cause why bill should not be referred to the ^{cause why} master to be taxed. If not attended on third ^{bill delivered} summons, judge will make order thereon ^{should not be} *ex parte*, by which he refers same to the master to ^{taxed by mas-} be taxed; on this order get master's appointment for taxing same, which he marks at bottom of order. Serve copy on the attorney whose bill is to be taxed; if not attended, get second appointment, and serve same as before, and master, if attorney doth not attend, will tax same *ex parte*. Pending summons, order, and taxation, nor after, if the sum at which bill is taxed is tendered him, attorney cannot bring action thereon. If papers are required to be delivered up, and attorney refuses to deliver same, court on motion will compel him so to do, or issue attachment.

Bankrupt must summon his plaintiff or plaintiffs before a judge, and on producing certificate duly allowed, judge will make an order directed to the keeper of the prison where bankrupt is in custody, to discharge him without fee or reward, if at no other person's suit since bankruptcy. If not in custody with marshal, it must be a writ of supersedeas, and not an order. This is done on first summons. ^{To discharge bankrupt out of custody where rendered in discharge of bail, having obtained certificate.}

Defendant may be discharged when in custody (*after bail perfected*) by summons before a judge. This is done on third summons.

Defendant may have summons to shew cause why common bail should not be accepted when affidavit for special bail is not sufficient or well founded.

Summon for infant to shew cause why he should not name a guardian to defend suit, &c. &c. &c.

M O T I O N.

All errors on writ served, or on which defendant is arrested, defendant must seek redress from the court by motion. There must be a notice in writing given to the attorney on the other side, and a copy of such notice, and an affidavit stating the error in writ, must be together with affidavit of service annexed to notice; when you move, court grants in these cases a rule *nisi* thereon; if plaintiff shews cause, writ must be produced. It must be moved before defendant's time to plead is out, or court will not relieve to the prejudice of plaintiff's carrying suit to issue or judgment.

All errors on inquiry, or the execution thereof, defendant must apply to court by motion on notice, and affidavit of the fact on which a rule *nisi* will be granted, which must be served on plaintiff's attorney; if plaintiff shews cause, inquiry must be produced; if no cause shewn, an affidavit of service of rule, court makes same absolute, and directs costs of application at their discretion. It must be moved before rule on inquiry is out, or defendant cannot have redress.

Defendant may set aside assignment of bail-bond, on putting in and perfecting his bail, &c. (as directed under summons) by motion, but it will be an easier expence to do it by summons, unless plaintiff is irregular in taking assignment, and then court on motion will subject him to the costs of same.

The same steps may be taken for any irregularity on either side, in the course of a suit, so
it

it is done in due time, and the party offending not put to a greater expence than he would have been subject to had it been done before.

All applications to the court grounded on affidavit; the affidavits are filed with Mr. *Cooper*, and the party to answer same must bespeak and pay for an office copy of such affidavit, which must be read when he shews cause to rule granted thereon.

If defendant takes any step in cause after error committed by plaintiff in his proceedings, such step cures plaintiff's irregularity, and defendant cannot afterwards have redress from court, and so *vice versa*.

On orders of reference from court, the party seeking relief must apply before award made, unless on some irregularity in award, and then before order is made a rule of court, or he will be too late.

Applications to pay money into court, or for a *consilium*, &c. require no notice or affidavit.

To change *venue* no notice, only affidavit of the fact.

For a special jury, no notice or affidavit.

To put off a trial, there must be notice and affidavit that a material witness is absent; it must be made two days before the day of trial, or it will not be granted.

On the *e* motions, rule, whether *nisi* or absolute, must be drawn up with Mr. *Cooper*; pay for same according to length, and serve copy on the attorney on the other side.

Note,—*This short sketch of summon and motion will direct the practitioner in any matter that may occur in the course of his prosecuting or defending a suit.*

I S S U E S.

When defendant has left general issue with plaintiff's attorney, or entered same in Mr. Caley's plea book, plaintiff must make up issue, and copy same on treble penny stamp paper to deliver to defendant's attorney; charge 4d. *per* sheet, containing seventy-two words, besides duty, and one shilling entering plea; if declaration not paid for before, same is to be charged on back of issue.

On delivery of issue to defendant's attorney, you demand payment of issue money, and if not paid, may sign judgment; but it is usual in practice to wait till the afternoon of next day, and even then, to demand the issue money in writing before signing judgment. This is not absolutely necessary; but the fair practitioner, who wishes to avail himself only of the merits of his client's cause, will always act thus.

If plaintiff's attorney delays delivering issue when joined, defendant's attorney may get a four day rule to enter issue, and bring in record from Mr. Benton, for which he pays nothing; it must be entered with Mr. Cooper, pay entering 1 s. 10 d. serve copy of rule on plaintiff's attorney, and within the time of rule he must enter issue, and bring in record, or defendant may sign a *non prof.* Vide directions under head of judgments on non prof.

In London and Middlesex, defendant cannot give rule to enter issue same term it is joined, unless notice of trial has been previously given. In country causes, plaintiff is not obliged to enter issue same term it is joined.

Michaelmas

Michaelmas Term, in the 12th year of
the reign of King George the Third.

Lcc.

The above title is to be of the term issue is joined.

London, to wit, } BE IT REMEMBER- Memorandum of issue,
or wherever venue laid, } ED, That on (*the first* when of the
day of the term declaration is of) before our same term
Lord the King at *Westminster*, came A. B. by with declaration
T. C. his attorney, and brought into the court
of our said Lord the King then there, his certain bill against C. D. being in the custody of the marshal, &c. of a plea of trespass on the case, and there are pledges of prosecution, to wit, John Doe and Richard Roe, which said bill follows in these words, to wit, (*here insert declaration verbatim to the end thereof, leaving out the pledges; then in a new line add* plea), AND the said C. D. comes and defends the wrong Plea,
and injury when, &c. and says he is not guilty of the premises above laid to his charge in manner and form as the said A. B. above complains against him; and of this he puts himself upon the country, and the said A. B. doth the Plaintiff's
like: THEREFORE let a jury thereupon come *similiter,*
before our Lord the King at *Westminster*, on and award of
(*last day of term issue is of*) twelve, &c. by venire.
whom, &c. and who neither, &c. to recognize,
&c. because as well, &c. The same day is given
to the parties aforesaid, &c.

Note,—Then issue is complete for delivery.

Title of term to be governed by issue.

London, to wit, } BE IT REMEMBER- When issue
or wherever venue laid, } ED, That in the term of a different
of term from
declaration.

The Modern Practice of the

of Saint Hilary last past, (*the term declaration is of*) then same as in former issue to the end of declaration. If defendant has had an imparlance, enter his plea in a new line with imparlance; thus,

Plea with
imparlance.

And now at this day, That is to say, on (*this first day of the term issue is of*) in this same term, to which day the said C. D. had leave to imparle to the said bill, and then to answer, and so forth, before our Lord the King at Westminster, comes, &c. (*as in former plea and similitur, according to the nature of the action.*)

Title as before, viz. term issue is of.

When plea
of a different
term from
declaration.

London, to wit, } BE IT REMEMBER-
or whereever venue laid, } ED, That heretofore,
that is to say, of the term of the Holy Trinity,
(*or such other term as declaration is of*) in the
12th year of the reign of our Sovereign Lord
George the Third, now King of Great Britain,
&c. came A. B. &c. (*as in former issue, add in
a new line plea with imparlance as before di-
rected. If there are more issues than one upon the
pleading to be tried, then add after the said A. B.
doth the like, Therefore as well to try this issue,
as the other issue or issues, as case may be, above
joined between the parties, therefore let a jury,
&c. as in award of venire to the first issue joined
to the end thereof.*)

By original. If proceedings are by original, there is no memorandum to issue, only title of term, declaration, plea *similiter*, and return of *venire*, must be an original return.

Trinity

Trinity Term, in the 12th year of King George the Third.

Manner of
indorsing
issue.

Lee.

A. B. }
against } Issue.
C. D. }

	l.	s.	d.
Copy issue, fol. 18, and duty,	0	6	6
Entering plea, - - -	0	1	0
Declaration unpaid, (if so) - -	0	5	6
	<hr/>		
	0	13	0
	<hr/>		

Mr. C.

Take notice of trial in this cause for the sittings after this present Trinity Term, (or whatever time cause is to be tried at Guildhall, in the city of London, if venue laid there) if in Middlesex, say at Westminster Hall, in the county of Middlesex; if in any other city or county, mention place where cause is to be tried. Dated
day of 1772.

Your's, &c.

R. R.

plaintiff's attorney.

Eight days notice of trial must be given in Practical re-
London, Middlesex, or within forty miles of marks.
London, exclusive of the day of notice; if above
that distance, fourteen days exclusive of the
day of notice. By statute 14 George 2. ten days
notice at least must be given for notice of trial
of a cause at the assizes where the parties reside
in the country.

It is held that this statute doth not alter the
practice where cause is to be tried in London or
Middlesex.

If

The Modern Practice of the

If issue has been joined four terms, plaintiff must give defendant a term's notice of trial. This notice must be given before the essoign day of the term issue is intended to be tried, and so on all others where a term's notice is required.

If plaintiff has occasion to countermand notice of trial, he must deliver such notice of countermand; if in *London* or *Middlesex*, or within forty miles of *London*, two days exclusive of the day of trial; if in a country cause, four days before the assizes. It must be delivered to the agent in town, but if to the attorney in the country, two days notice sufficient. *Strange* 849, 1073.

In the *King's Bench*,

A.
against
B.

Form of
counter-
mand.

Mr. C.

Take notice, that I do hereby countermand the notice of trial given you in this cause, for the sittings after this present *Trinity Term*, at *Guildhall*, in the city of *London*, (or such other place as cause to be tried at) Dated
day of 1772.

Your's, &c.

To Mr. C:
defendant's attorney, }
These.

R. R.
plaintiff's attorney.

By the practice of this court, a plaintiff may continue his notice of trial once, *viz.* from one sitting to another, within or after term, or till the next term, but if not tried, then you must countermand, and give fresh notice of trial.

In the *King's Bench*,
A.
against
B.

Form of con-
tinuing no-
tice.

Mr. C.

Take notice, that I do hereby continue the notice of trial given you in this cause, for the
sittings

Court of King's Bench.

145

sittings after this present *Trinity Term*, to the first sittings in next *Michaelmas Term*, at *Guildhall*, in the city of *London*, (or such other place as cause is to be tried at) Dated day of 1772.

To Mr. C. } Your's, &c.
defendant's attorney. } R. R.
plaintiff's attorney.

Notice of continuance must be delivered with- Practical re-
in the same time as notice of countermand, but ana les.
cannot be continued but once in a term.
Strange 1119.

If cause not tried after a term's notice, it may be tried in the subsequent term without fresh notice, but if deferred longer, plaintiff must give a whole term's notice as before. If cause entered for any sitting within term, unless made a *remanet* by court, plaintiff may try it at the next sitting, on giving two days notice, but if not then tried, must give same notice of trial as at first.

If plaintiff is hindered from trying his cause in *London* or *Middlesex* by a *ne recipiatur*, he may give fresh notice, and try it the next sitting. *Mich. 4 Ann.*

If defendant serves plaintiff with rule to enter issue, who has mislaid his papers so as to be unable to comply with rule, court, on affidavit, (*see end of book*) will order defendant's attorney to give him copy of issue. *Strange 414.*

If any notice or countermand hath been given in the cause within four terms, no necessity to give a term's notice. *Strange 531.*

If cause made a *remanet*, defendant bound to attend till the cause is tried.

If plaintiff does not countermand, or try the cause according to notice, defendant shall have his costs to be taxed on affidavit of the fact,

O

(for

(for the form thereof, see page 25, 26.) Mich. 1654.

Court will not stay proceedings for not paying the costs, except in ejectment, defendant having another remedy to recover same.

A *pauper* shall not pay costs for not proceeding to trial; but to prevent him from being litigious, court will not allow his cause to be tried till costs paid; and if litigious, so as to subject defendant to much charge, court will on motion *dispauper* him. *Strange* 420, 983.

MAKING UP RECORD FOR TRIAL.

Plaintiff must ingross record on a double half crown prefs of parchment. Get a King's Bench roll from Mr. *Heberden*, at King's Bench office; pay 4d.; make an *incipitur* thereon of the issue memorandum; carry record roll, and your draught of issue to Mr. *Caley*; pay him for issue, not exceeding ten sheets, 3 s. 6 d. and for every six sheets more 1 s.: This done, carry record to Mr. *Tully*, *Holborn Court*, *Gray's Inn*; pay him 7 s. 6 d. for the first eight sheets, and 7 s. for every eight sheets more; and on a country cause, if above three weeks from the end of the term, 2 s. for judge's warrant. If record on an old issue, you pay both for town and country causes 2 s. more. It is usual to pay Mr. *Phillips* at same office 6d. for sealing record, though not a matter of right.

First placita.

Form of record to be wrote in German, or common text hand.

PLEAS before our Lord the King at *Westminster*, of the term of (*the same term as issue*) in the twelfth year of the reign of our Sovereign Lord *George* the Third, by the grace of God of *Great Britain*, *France*, and *Ireland*, King, defender of the faith, &c. and in the year of our Lord one thousand seven hundred and seventy-two.

Roll.

Lee.
LONDON,

LONDON, to wit, } BE IT REMEM-
 or where venue laid, } BERED, &c. (*here*
insert issue verbatim, with plea similiter, and
awarding venire, beginning plea in a new line,
then ingross second placita thus,)

PLEAS before our Lord the King at *West-* Second pla-
 minster, of the term of (*here insert term issue is to* cita.
be tried) in the twelfth year of the reign of our
 Sovereign Lord George the Third, by the grace To be wrote
 of God of Great Britain, France, and Ireland in German,
 King, defender of the faith, &c. and in the or common
 year of our Lord one thousand seven hundred text haad.
 and seventy-two. (*Then add in a new line the*
jurata, thus,)

LONDON, to wit, } THE JURY be- Jurata.
 or where venue laid, } tween A. B. plain-
 tiff, by his attorney, and C. D. defendant of a
 plea of trespass on the case, (*or as action may be*)
 is respited before our Lord the King at *Westmin-* If by origi-
 ster, until (*here insert the return of* distringas, nal, it must
which must be the next return day after trial) un- have an ori-
 less the King's right trusty and well beloved ginal return.
 William Lord Mansfield, his Majesty's Chief
 Justice, assigned to hold pleas in the court of our
 said Lord the King, before the King himself,
 shall first come on (*the day of sitting in or after*
term in which cause is to be tried) at Guildhall,
 London aforesaid, (*if in London, or at Westmin-*
ster Hall, in the county of Middlesex; or if a
country cause, at such city or town where assizes
are held) according to the form of the statute in
 such case made and provided for default of
 jurors, because none of them did appear:
 THEREFORE let the sheriff have the bodies of
 the said jurors, to make the said jury between
 the parties aforesaid, of the plea aforesaid, ac-
 cordingly. The same day is given to the parties
 aforesaid at the same place.

If cause to be tried at the assizes, add to *jurata* as follows :

Addition to
jurata in
a country
cause.

AND BE IT KNOWN, That the King's writ in this case on record, was delivered to the deputy sheriff of (*county where venue laid*) on (*the last day of term*) in this same term, before our Lord the King at *Westminster*, to be executed according to law at his peril.

Observations
on *venire facias* and
distringas.

The plaintiff's attorney must make out writs of *venire facias* and *distringas*, which are on a two shilling stamp each, and may be had at any law stationer's ready printed, price 2 s. and 2 d. These writs are not to be signed. Pay sealing, at seal office, 7 d. each.

If cause to be tried in *London* or *Middlesex*, *venire* is to be tested the first return of term in which cause is to be tried, and returned some return day before trial; the *distringas* must be tested on the return day of the *venire*, and returnable the next return day after trial. If at assizes, *venire* must be tested the first return day preceding the assizes, and returnable the last day of that term; the *distringas* must be tested on the return day of *venire*, and returnable the first return of the next term after the assizes.

If in *London* or *Middlesex*, the *venire* is taken out by plaintiff's attorney, in order to be allowed him in costs, but never used or sealed. In *London*, carry *distringas* to one of the *Compters*; pay sheriff for returning it, 4 s. 6 d. In *Middlesex*, carry same to the sheriff's office in *Furnival's Inn*; pay there returning 12 s. If in a country cause, *venire* is returned by sheriff's deputy in town, and the *distringas* by the under-sheriff in the country.

Subpœna.

Blank *subpœnas* are to be had at any of the law stationers, on a double twelve-penny stamp. Pay for same 2 s. 1 d. Four witnesses may be put

put in each *subpœna*. Test of writ of *subpœna* any day in term before trial and service. Make *præcipe* for office in manner following :

London, to wit, A *subpœna* to testify for A. *Præcipe* for B. plaintiff against C. D. defendant, (or *vice versa*) of a plea of trespass, (or as the nature of the case may be).

R. R. attorney,

Jan. 1772.

Carry *præcipe* with *subpœna* to Mr. Heberden ; pay signing 1 s. 8 d. sealing 7 d.

Get *subpœna* tickets ; fill them up by *subpœna*. Direct each to a witness, and serve a ticket on each witness, giving a shilling therewith ; and, at the same time, shewing the original *subpœna*. It is usual to write at bottom of *subpœna* ticket where witness is to meet plaintiff or defendant's attorney (as case may be) on the day of trial.

George the Third, &c. To the sheriff of *Venire facias* (where cause tried) greeting : We command you, that you cause to come before us at *Westminster*, on (here insert some return day before trial) twelve free and lawful men of the body of your county, each of whom has ten pounds by the year of lands, tenements, or rents, at the least, by whom the truth of the matter may be the better known, and who are in nowise in kin either to A. B. plaintiff, or to C. D. defendant, to make a certain jury of the country between the parties aforesaid, on a plea of trespass on the case, (or as the action may be) because as well the said C. D. as the said A. B. between whom the contention thereupon is, have put themselves upon that jury ; and have there then the names of the jurors, and this writ. Witness William Lord Mansfield, at *Westminster*, (the first day of term

term of *which cause to be tried*) in the 12th year
of our reign. Lee.

*Attorney's name, day, month,
and year, indorsed on the
back.* }

Distringas.

George the Third, &c. To the sheriff of
(*where cause tried*) greeting: We command
you, that you distrain the several persons named
in the panel annexed to this writ, (*the sher-
riff returns this writ, and annexes panel*) the
jury summoned in our court, before us, between
A. B. plaintiff, and C. D. defendant, by all
their lands and chattels in your bailiwick; so
that neither they, nor any one of them, lay
their hands upon them, until you shall have
further command therein from us; and that
you answer to us of the issues thereof, so that
you may have their bodies before us, at *West-
minster*, on (*here insert first return day after
trial*) or before our right trusty and well-be-
loved William Lord Mansfield, our Chief Justice
assigned to hold pleas in our court, before us,
if he shall first come, on (*the day of trial*); if
in London, say, at Guildhall in the city of Lon-
don aforesaid; if in Middlesex, say, at *Westmin-
ster Hall* in the county of Middlesex; if at the
assizes, say, before our justices assigned to keep
the assizes in your county, if they shall first
come (*the day of assize*) at (*place where held*) in
your county, according to the form of the sta-
tute in such case made and provided, to make
a certain jury between the said parties of a plea
of (*as the nature of the action is*); and to hear
their judgment of many defaults: *Provided al-
ways, that if two writs thereof shall come to you,
then one only of them execute and return; and have
there then the names of that jury, and this writ.*
Witness, &c. (*as before*).

This is to be
inserted in
distringas,
when cause
brought
down by
proviso, and
by defen-
dant.

(*Indorse same as venire.*)

Lee.

George

George the Third, &c. To *(the witness by name; you may put four in a writ)* greeting: We command you, that all and singular, businesses and excuses being laid aside, you, and every one of you, be in your proper persons before our right trusty and well-beloved William Lord Mansfield, our Chief Justice assigned to hold pleas in our court, before us, at Guildhall, in the city of London, or at Westminster Hall, in the county of Middlesex, *(if in Middlesex)*; if at the assizes, say, before our justices issued to keep the assizes in your county, if they shall first come, on *(the day of the assizes)* at *(the place where held in your county)* on *(the day of trial)* to testify all and singular what you, or either of you, know in a certain cause now depending undetermined in our court, before us, between A. B. plaintiff, and C. D. defendant, of a plea, *(as the action is)*; and at that day to be tried by a jury of the county: And this you, or any of you, are by no means to omit, under penalty upon each of you of 100 l. Witnesses, &c. *(as before)*. Subpœna to testify on trial.

Lee.

(Indorse same as above).

Note,—If the proceedings are by original, the word THEN in the conclusion before the teste of the above writ must be omitted.

Mr. E. F. *(the witness)*.

By virtue of a writ of subpœna to you directed, and herewith shewn unto you, you are personally to be and appear before *(the judge who tries cause, with his title, whether in town or country)* on *(the day of trial)* by nine o'clock in the forenoon; if at the sittings after term, in town; or in term, at the sittings, by three o'clock in the afternoon; if in the country, by nine o'clock in the forenoon of the same day, at *(in Middlesex, Westminster Hall, in the county of Middlesex; in London, Guildhall, in the city of London; at the assizes, place where assizes held)*

Subpœna ticket.

Lee.

George

The Modern Practice of the

held) to testify the truth according to your knowledge, in a certain cause now depending, and then and there to be tried between *A. B.* plaintiff, and *C. D.* defendant, in a plea of trespass, (or as the case is) on the part of the plaintiff or defendant, (as the case is): And hereof you are not to fail, under the penalty of 100*l.* Dated the day of 1772. By the Court.

To meet at Coffee-house.
Ask for *R. R.* plaintiff's attorney, (or as the case is).

If any of your witnesses should be in prison, you must have a *habeas corpus* to bring them to give their testimony, as follows:

Habeas corpus.

George the Third, &c. To *E. F.* Esq; &c. Greeting: (*this writ must be properly directed to the officer in whose custody witness is*) We command you, that the body of (*the witness by name*) in our prison, under your custody, as it is said, detained under safe and secure conduct, by whatsoever name the said (*the witness*) may be called in the same, you have before our right trusty and well-beloved *William Lord Mansfield*, our Chief Justice assigned to hold pleas in our court, before us, at *Westminster Hall*, in the county of *Middiesex*, or at *Guildhall*, in the city of *London*; if at the assizes, mention the names and titles of justices of assizes, and place where assizes held, on (*day when cause to be tried, at nine o'clock in the forenoon of the same day*) there to testify the truth, according to his knowledge, in a certain cause now depending in our court, before us, and then and there to be tried between *A. B.* plaintiff, and *C. D.* defendant, in a plea of trespass and assault (*or as the case is*); and immediately after the said (*the witness*) shall then and there have given his testimony before the said (*the judge who tries cause, whether in town*)

town or country) to return him the said (the witness) to our said prison, under a safe and secure conduct; and have you then there this writ. Witness William Lord Mansfield, at Westminster, this according to general directions) in the 12th year of our reign.

Lee.

Attorney's name to be indorsed,
with day, month, and year,
sued out. }

If plaintiff or defendant have a witness going abroad pending suit, they may by motion of court, grounded on affidavit of the fact, procure a rule of court to examine such witness before a judge, at his chambers, on interrogatories. When rule obtained, it must be drawn up with Mr. Cooper; pay for same 5 s. It is most prudent to get your counsel employed in the cause to draw the interrogatories, as they must be signed by counsel, for which you will furnish him with instructions, according to such parts of the case as witness can speak to. When your interrogatories are ready, you serve copy of rule, and give notice to attorney on the other side, when and before what judge you shall bring your witness to be examined, that he may attend to cross-examine him, if he thinks proper.

The depositions taken before the judge, on such examination, each party generally takes copies of, which is delivered them by the judge's clerk. Pay him after the rate of 11 d. per sheet for same, which are read by the party examining witness as evidence for him on the trial of the cause.

Causes in London or Middlesex, if for the sitting in term, must be entered two days exclusive of entering causes for trial. If for the sitting

sitting after term, cause must be entered the day before the adjournment day in *London* or *Middlesex*, or marshal may refuse to receive same.

Cause must be entered in the marshal's book at Lord Mansfield's chambers in *Serjeant's Inn*, *Chancery Lane*. Pay entering 11 s. 8 d. When you enter cause, leave record with *disfringas* and panel annexed, with the marshal. In a country cause, the writ and record to be entered together with the marshal; pay him 12 s. and no record to be received without writ, which are to be delivered to the marshal the day after commission is opened before the court sits: But in the counties of *Norfolk* and *York*, not till the second day after commission day.

All town and country causes are to be tried in the order as they stand in judge's paper, unless reasonable cause shewn to the contrary by party requiring same.

EVIDENCE.

The law requires the utmost evidence the nature of the fact is capable of.

Evidence is either written or unwritten, public or private.

Comparison of hands evidence in civil cases.

The Pope's licence, without the King's, good evidence of an impropriation. *Palm.* 427.

A Pope's bull no evidence on a general prescription to be discharged of tithes; but evidence on a spiritual prescription respecting lands that formerly belonged to a monastery, and were discharged from tithes at the time of dissolution. *Theor. Evid.* 44.

An old survey of a manor may be given in evidence. *Trials at Nisi Prius* 234.

Written

Written private evidence, not under seal, is to be considered at common law, and on the statute of frauds.

Mere hearsay evidence is not admissible, but may corroborate the testimony of a witness. *3 Bur. 1255.*

No man's promise supposed to extend to impossibilities. *Tri. per pais 399.*

A promise to marry a woman within three months; a second promise to marry her within six months, discharges the first; but not, if the second promise had been to marry her in a less time than first agreed on. *Tri. per pais 401.*

In an *assumpsit* in deed, the very contract must be set forth in declaration; but in *assumpsit* in law, if the plaintiff shews part of the goods delivered, or money lent, it is sufficient. *Com. 373.*

On mutual executory promises and contracts, each has a remedy on the other for non-performance. *Rel. Rep. 336.*

If there are no words in a promise, covenant, or agreement, that import a condition, they are never construed conditional. *Owen 54.*

If defendant's promise arises on the consideration of some act to be done and performed, and not on the promise, the act must be first done before defendant's promise can arise. *Ld. Raym. 665.*

In an *assumpsit* in law, actual payment, or any matter that excuses payment, may be given in evidence on *non assumpsit*; but in an *assumpsit* in deed, it must be pleaded. *Ch. J. Parker.*

In debt against an executor, he pleads the testator was taken in execution by a *ca. sa.* the jury find he was taken by an *alias capias*; this shall be intended on the same judgment without any averment. *Gilb. Evid. 39.*

The wife by her contract cannot bind her husband. *2 Vent. 155.*

The act of the wife contracting, if she co-

habits

habits with her husband, is presumptive to persuade the jury of the contract of the husband; but not if absented from the husband. *Salk.* 113.

The usual employment of the wife is good, but not conclusive evidence; and that the husband has paid her debts is stronger. *Ibid.*

That the things came to the use of the husband, or his family; were necessary; or that he was absent; is good evidence of a contract to bind the husband, but not conclusive evidence. *Ibid.*

If the husband forbid any one from trusting his wife, and he afterwards trust her, he cannot charge the husband with this contract. *Ld. Raym.* 445.

If the jury finds the wife contracted for necessities in the absence of the husband, this is good evidence to persuade them the husband doth contract; but if this be found and offered to the court, they cannot judge it the husband's contract. *Ibid.*

A wife may do an act relating to her own estate, but cannot constitute an attorney to do it. *2 Saund.* 215.

Acceptance makes the correspondent liable in a special action on the case, on the custom of merchants, but not in an action of debt. *Burr. Rep.* 376.

Evidence of a writ sued out on a subsequent day, may be given to obviate the fictitious relation of a declaration to the first day of term where it has a special memorandum. *3 Burr.* 1243.

A retainer of a debt may be given in evidence. An administrator, when defendant may give such retainer in evidence, or plead it. *3 Burr.* 1383.

Obligation to deliver twenty bales of silk, or 40 l. on non-payment, the obligee may sue on either. *Hil. Ass.* 1701.

If a man declare on a bond made the 1st of August, and on the proferit it appears to be dated the 2d, on demurrer, the court cannot adjudge

adjudge them to be the same; the reverse in leases. 12 Mod. 193. 5 Mod. 281.

But if after oyer of the bond, defendant pleads *non est fact.* and the jury finds it his deed, the court will intend them the same. 5 Mod. 281.

When a word in a deed is capable of two senses, that sense is to be taken that makes most strongly against the grantor. *Styles* 118.

A contract founded on a specialty cannot be dissolved but by a specialty. *Cro.* 884.

In a verbal contract, the individual contract set forth in the declaration must be proved. *Gold.* 154.

Copy of a record is evidence; but the copy of a copy no evidence. 3 L. 387. 2 Bac. Abr. 308.

Where a record is lost, a copy of it may be read, without swearing it a true copy. *Salk.* 285.

Office copies not evidence, unless authenticated by the proper officer. 8 Geo. 2.

Copies of public matters, not of record, may be given in evidence, but not a voluntary affidavit. *Theor. Evid.* 22.

A copy of a will remaining in the Chancery is good evidence. *Keb.* 117.

Copyhold rolls stating a surrender to the use of the will of A. no evidence of the seisin of A. without the will. *Jenkins and Baker, per Tracey* 1705.

He who has an uncertain estate, has a title to the corn, &c. on its determination; hops reared on old stocks excepted. *Cro.* 460.

Rolls or copies of a court baron good evidence. *Theor. Evid.* 43.

Probate of a will good evidence as to the personal estate. *Roll. Abr.* 678.

A decree in Chancery, or a sentence in the Ecclesiastical courts, may be given in evidence. 2 *Strange* 1242.

The Modern Practice of the

The bill in Chancery is evidence against the complainant, unless no proceedings thereon. 2 *Sid.* 221.

An answer is evidence against defendant, but then the confession must be all taken together. 5 *Mod.* 10.

An infant's answer by his guardian shall not be given in evidence against him in a suit at law. *Salk.* 350.

An affidavit proved to be sworn, is evidence against the person, provided the proceedings on which the affidavit arose are given in evidence to prove the identity of the person. *Str.* 35.

The voluntary affidavit of a stranger is no evidence. *Styles* 446.

Depositions may be read when the witnesses are dead, on affidavit that they have been sought and cannot be found, on proof of their having been *subpoena'd*, and falling sick by the way. 2 *Bac. Abr.* 305. 11 *Mod.* 263.

But cannot be given in evidence against any person that was not party to the suit. *Hard.* 472.

Demands arising on the same contract, and in the same action, may be balanced.

The deed itself must be given in evidence, and be proved by one witness at least, unless an ancient deed, above forty years old, with which possession has gone, unless original burnt, or in defendant's hands, who will not produce it, when the copy is good evidence, if proved to be compared with the original. 10 *Co.* 92. *Mod.* 266.

An alteration of a deed in part not material by a stranger, without the consent of the parties, does not avoid the deed, but does in a material part. 2 *Str.* 1160.

But

But an alteration by the party himself, in a part not material, does avoid the deed. 11 Co. 27.

If one covenant be altered, it destroys the whole deed. 11 Co. 286.

If blanks in places material be filled up by consent of the parties, the obligation is void, but not in places immaterial. 2 Roll. Abr. 29.

Where the deed is necessary to be shewn, in order to acquire the interest, there a man fails if the seal be torn from his deed. 3 Bulf. 79.

If one of the obligor's seal be torn off, it destroys a joint but not a several obligation. Ney 112.

There must be a *profert* made of solemn contracts in an action founded upon such contract, unless detained by the adverse party. Mich. 1718, in the Exch.

If a man issue out an *elegit*, and brings an ejectment to try his title, he must shew his *elegit* filed. Tri. per pais, 6 Ed. 386.

If the plaintiff declares for a manor, he must prove the attornment of the tenants. Str. 106.

If a man makes a general entry into part, it is sufficient to vest the whole estate; but where he enters to divest an estate, his entry must be special. Co. Lit. 15. B.

If there be a disseisin of two acres in two different counties at the same time, there must be distinct entries. Co. Lit. 49. B.

Copy of an execution no evidence, the original must be produced. Tri. at Ni. Pri. 214.

On *plene administravit*, execution executed cannot be given in evidence, without the judgment; nor is an account given in to the ordinary evidence, or to be regarded. Tri. per pais 227, 235.

The Modern Practice of the

Exemplifications of depositions in Chancery shall be delivered to the jury, if the party be dead; but if they comprehend the testimony of some that are living, they cannot be given in evidence. *2 Roll's Abr.* 687.

Things that lie in livery may be pleaded without deed; but for a thing that lies in grant regularly, a deed must be shewn. *Gilb. Evid.* 84.

Livery is an estoppel, *per pais. Co. Lit.* 352.

A deed of feoffment may be given in evidence as a release; and a deed may be given in evidence on a rule of court, without proving such deed. *Tri. per pais* 209, 347.

Chirograph of a fine, evidence of such a fine, but not of the proclamations, which must be examined from the roll. *Pl. Com.* 110. *B. Tri. per pais* 209.

The indorsement of an inrolled deed is evidence, without further proof of the deed. *8 Geo. 2.*

If an inrolled deed be lost, a copy of the inrolment only, made out by the clerk of the assize, is no evidence, without proving it examined. *Ibid.*

An informal issue is aided by the statute of jeofails. *Raym.* 98.

On a special issue, nobody can run into any point that is out of the issue; but on the general issue, whatever tends to satisfy the plaintiff's cause of complaint, may be given in evidence. *Gilb. Ev.*

In debt against two, if proved the debt of one, and not of another, the issue is maintained. *2 Roll. Abr.* 677.

Not lettered, evidence on *non est fact.* *Plowd.* 66.

A stranger cannot plead a general or a special *non est fact.* but *rien passa par le fait.* *Roll. Rep.* 188.

In-

Infancy cannot be given in evidence, but must be pleaded; coverture may. *Tri. per pais* 467.

Evidence that the person was blind, and the deed misread to him, will justify *non est fact.* Styles 78.

If the defendant pleads *non est fact.* and demurs to the obligation, the demurrer is void. 35 H. 6. 9 B.

If two are jointly bound, and one is sued, he must plead this in abatement, and cannot give it in on the general issue on *non est fact.* otherwise on *assumpsit*. Sid. 420. 2 Vent. 151.

In debt on a single bond, payment without acquittance is no plea; but payment at the day is a good plea to debt on an obligation with a condition. *Gilb. Evid.* 173.

On *solvit ad diem*, the payment ought to be proved on the very day the money payable; but this is aided by the statute for amendment of the law. 4 Ann.

Non assumpsit infra sex annos, lies in all actions on the case; but does not extend to an *assumpsit* between merchant and merchant; and is pleaded by way of negation to the declaration, or by way of bar. 2 Salk. 424. *Gilb. Evid.* 180. *Lib. Plac.* 61.

Confession of the defendant within the time, is evidence of a new promise, if found by a special verdict. 12 Mod. 578.

Upon an *assumpsit*, covenant under hand and seal to pay, is no evidence, nor any specialty or matter of record, or any contract for rent. *Danv. Abr.* 30, &c.

The wife, by her contract, cannot bind the husband. 2 Vent. 155.

On *non assumpsit*, infancy may be given in evidence in discharge of the promise. *Raym.* 389.

The Modern Practice of the

On an *indebitatus*, no evidence can be given of an account current. *2 Keb. 781.*

Delivery of the goods, evidence of the sale on a *quantum meruit*. *Gilb. Evid. 187.*

If a man makes a lease for years, in *debt* for tithes, *nil debet* is the general issue; but in *debt* on an obligation, *non est fact.*

Eviction, expulsion, or any suspension of rent, is good evidence. *Gilb.*

Payment may be given in evidence; but a release must be pleaded. *Ibid.*

On Not guilty in ejectment, the lessors must be the same in the allegation and evidence. *Show. 342.*

If there be several coheirs, they must make several leases to try their titles. *Ld. Raym. 726.*

The lease proved, must agree with the lease alledged, in the land and number of acres. *Gilb. Evid. 212.*

Where the declaration is of a lease generally, a lease made by a copyholder or guardian is good evidence. *Hard. 330.*

A demise of the herbage and pannage, not sufficient to maintain the issue. *Ibid.*

The confession of entry and ouster does not extend to such cases where it is necessary to prove an entry to make a title in the lessor of the plaintiff, as for a condition broken, or to avoid a fine. *Salk. 259. 2 Barn. 217.*

If a man makes a lease to begin a *die datus*, he cannot prove his entry at the day the lease was made. *Sir. 550.*

If a lessee assign or make a lease to another, the second lessee must prove the possession of the first. *Gilb. Evid. 231.*

Trustee of a lease, lessor in ejectment, by his disclaimer in *pais*, will avoid the plaintiff's title. *2 Keb. 795.*

In ejectment, defendant cannot give in evidence a former mortgage or contract made by himself. *Tri. per pais*, 6 Ed. 388.

A parson in ejectment must prove admission, institution and induction, his subscribing the articles, and declaring a full and free assent to the common prayer, (*unless after ten years possession*), but need not shew any right in his patron. 6 Co. 29. b. 2 Sid. 221.

On Not guilty pleaded, if lessor of the plaintiff shew a feoffment, defendant may give covin in evidence, but not on *nient*, *feoffa pas*. Hob. 166.

But if a feoffee by covin pleads that he was seized at the time of the judgment, by virtue of a feoffment, and the creditor, that he was not seized, on this issue the covin may be given in evidence. *Hob.* 72.

An heir pleading *riens per descent*, and giving a feoffment in evidence, plaintiff may give covin in evidence. *Gilb. Evid.* 234.

If copies of court-rolls are shewn to prove a customary estate, the enjoyment of such estate must be proved. *Styles* 450.

Plaintiff assigning the trespass in a particular acre, evidence of trespass in half that acre is sufficient. In ejectment, plaintiff must prove title to the whole. *Yelvert.* 114.

One tenant in common bringing trespass without the other, defendant must plead this in abatement, and cannot take advantage of it on the general issue; *vice versa* in ejectment. But if one brings the action against the other, he may take advantage of this on the general issue. 2 Str. 280. 3 Leon. 94.

A licence or defect of inclosures cannot be given in evidence by defendant. *Co. Lit.* 283.

That

The Modern Practice of the

That defendant came into plaintiff's ground to glean may be pleaded, but cannot be given in evidence. He may also plead that he entered plaintiff's close to take his own horse, but cannot give it in evidence: A right to a way may also be pleaded, but not given in evidence. *Tri. per pais* 394, 395, 399.

In trespass all are principals. *Co. Lit.* 57.

Defendant in trespass for the mesne profits after a recovery in ejectment, cannot insist on any title over-ruled on the ejectment, *Sid.* 239.

In an action for false imprisonment, defendant may give in evidence, that he acted by virtue of a warrant from a justice of the peace. *7 Jac.* 1.

Defendant may justify by reason of a prescription, but cannot give it in evidence. *Clayt.* 54.

Defendant may give in evidence, that he entered by command of the person in whom the right of the freehold was. *2 Rol. Rep.* 682.

In an action against an inholder, for suffering the goods of his guests to be taken out of his house, he may give in evidence, that he told plaintiff his house was full; and that nevertheless he would come in and lodge there. *Rol. Abr.* 3.

If the recoverer brings trespass, though judgment be reversed by writ of error, he may give the whole matter in evidence, and maintain his declaration. *13 Co.* 21.

In trespass, evidence of agistment of beasts taken into the land of defendant, will maintain the declaration. *Tri. per pais* 368.

In trespass, *et alia enormia ei intulit*, any matter *ex turpi causa* may be given in evidence, as an injury done to plaintiff's daughter. *Keb.* 787.

Evidence, that the trespass was done before action brought, is sufficient. *2 Rol. Abr.* 680.

Though a man be proved dead when it is declared *he assumed*, proof of a promise on another day will do; but in trespass, proof of his death on the day discharges the action. *Ld. C. J. Holt.*

In an action on the custom for safe carriage, evidence of the delivery and charge to carry them safe, is sufficient, without shewing whither; and if no price be settled, it shall be supposed to be for the usual price; but if a special agreement be averred, it must be proved. *Gilb.*

In trespass, defendant may prevail by proving title to the land, or to the profits thereof. *Gilb.*

243.

In trover against husband and wife, it is sufficient to prove the goods in possession of the wife. *Rol. Abr.* 6.

If defendant converts to his own use goods delivered to him by plaintiff to keep, it is sufficient evidence of a trover. *2 Bulst.* 312.

If the bailee refuses to deliver a thing pawned, on tender of the money, it is evidence of a trover. *Noy* 137.

A request and denial is evidence of a conversion; thus, if trover be for money, these circumstances are so strong a presumption of conversion, that nothing can be proved to the contrary; but it is not conclusive evidence, if the money be in a bag. *2 Bulst.* 314.

Defendant where he has a general property may give it in evidence on the general issue. *Gilb. Ev.* 263.

Nature of the thing being altered, is good evidence of a conversion, but not of *detinue*. *Str.* 576.

Abuse of an horse lent, no evidence in *trover*; but if the horse was lent to go to *Lewes*, and the

the defendant took him to *Bedford*, this evidence will maintain trover. 2 *Bulst.* 309.

An unjust taking of goods, if proved, is good proof of conversion, though plaintiff cannot prove either demand or refusal. 2 *Sid.* 264.

Plaintiff must prove property in *trover*, but not in trespass. *Ld. C. J. Holt.*

Defendant pleading *nullum fecit vastum*, cannot give in evidence that the buildings were repaired, and the waste set right, before the action brought, or licence to cut down trees; but may give in evidence, that the house was in a ruinous state at the time of the lease made, that it was blown down, or burnt by accident. *Ca. Lit.* 283. 11 *H.* 8.

If the defendant cut timber, and lay it out in repairs, he must plead this matter, but cannot give it in evidence. *Gilb. Evid.* 274. *Ca. Lit.* 283.

A man may give a release before the *disseisin*, in evidence; but after, it must be pleaded. *Ca. Lit.* 283.

Plea of *son assault* cannot be given in evidence on the general issue; it must be pleaded. *Tri. per pais* 398.

If any matter given in evidence that was used at a former trial, it must be between the same parties. *Lewes and Clerge's, Gilb. L. E.*

What a man swore at one trial may be given in evidence at another, if he then swears differently to the same fact, in order to take off the weight of his evidence. 2 *Keb.* 384.

Trover will lie against a man who borrows a horse belonging to another, and rides him, and afterwards returns the said horse, because he had the horse in his possession, and converted him to his use; the redelivery will only be evidence in mitigation of damages. *Roll. Abr.* 5.

A verdict given in ejectment, between same parties, on same point, may be given in evidence

on another trial between them, tho' not for the same land. *Lewes and Clerges, Gilb. L. Evid.*

A verdict in a criminal matter cannot be given in evidence on a civil one. *Gilb. L. E. 31.*

Ejectment against several, verdict obtained against one defendant, cannot be given in evidence against the rest. *Lord Raym. 1292.*

Verdict in ejectment or trespass, on party's own oath, cannot be given in evidence on another action brought for same trespass; otherwise if founded on other testimony. *2 Sid. 325.*

No one can take the benefit of a verdict in evidence, that was not liable to advantage or prejudice therefrom. *Hard. 472.*

A person who holds a term for years, and recovers against his lessee, the reversioner may give such verdict in evidence. *Hard. 472.*

If A. lessee of B. bring an ejectment against D. and verdict for defendant, same may be used as evidence against B. *Gilb. L. E. 36.*

A will, partly in form of a deed and will, may be given in evidence as a will. *Vent. 257.*

Where there are three witnesses to a will, one of them proving the other two being present, and attesting same, is good proof, under the statute of the execution of such will. *2 Will. Rep. 510.*

In ejectment to prove relation of father and son, by the father's will, the original, and not the probate, must be produced. *Tri. N. P. 232.*

A person cannot be a witness in a matter where he is interested, but he may against himself. *2 Atk. Rep. 825.*

In an action brought by an infant, the guardian cannot give evidence of any matter in such action. *2 Strange 1026.*

The Modern Practice of the

An executor is a good evidence in a cause relating to the will of his testator, if he is not a residuary legatee. 3 *Will. Rep.* 181.

If an obligee devises a debt to an obligor, and executor delivers up same to him cancelled, he is a good witness to prove testator *compos.* *Gilb. L. Evid.* 128.

Where a hundred is sued on the statute of *Winton*, none of them can be evidence in such suit. 2 *Roll. Abr.* 685.

Inhabitants of a village, or freemen of a corporation, may be witnesses in a matter relating to the public, where their private property is not concerned. *Sid.* 109.

In a statute law, where same could not be enforced, otherwise, a party interested may be a witness. 2 *Roll. Abr.* 685.

Husband and wife cannot be witness for or against each other in a civil action, but any other relation may. 2 *Hawk. P. C.* 433.

Attorney, counsel, or solicitor, may be examined as a witness to what he knew before retained by his client, but not after. 2 *Alk. Rep.* 524.

In trespass against a bailiff on goods taken in execution, and Not guilty pleaded, evidence must be given of the judgment and writ of execution, shewing the sheriff's warrant is not sufficient. *Gilb. L. E.* 40.

On an action for fees by an attorney, he may prove writ sued out by warrant. *Trin. Aff.* 1701.

B R I E F.

It must contain an abstract of the interlocutory pleadings between the parties before issue joined;

joined; a state of the plaintiff or defendant's case; the supposed objections that will be made to such case, and answers thereto, with proofs of case, and answers to objections to the said case. The practicer, in drawing his brief, cannot be too concise, so he preserves perspicuity.

K. B. } *For the plaintiff.* } *A. B. plaintiff, Form of brief.*
 } *Between and*
 } *C. D. defendant.*

DECLARATION, *London, ff.*—FIRST COUNT.—Plaintiff declares, That whereas on the 4th October, 1762, at *Pitt Ville*, in the island of *Guadaloupe*, defendant, according to the custom of merchants, made his certain bill of exchange in writing, and then and there directed same to Messrs. *Guez* and *Henry*, merchants in *Pitt Ville* aforesaid, and by the said bill of exchange, said defendant requested said Messrs. *Guez* and *Henry* to pay to plaintiff or order, the sum of 100 l. and place it to the account of said defendant: And further, that bill of exchange was presented to said Messrs. *Guez* and *Henry*, and also to defendant at *Pitt Ville*, in the island of *Guadaloupe*, but said Messrs. *Guez* and *Henry*, and defendant, refused to accept same, or to pay bill of exchange, though same was several times presented by plaintiff to defendant at *London* aforesaid.

SECOND COUNT.—*Indebit. assumpsit* for another 100 l. for money lent and advanced by plaintiff to defendant.

THIRD COUNT.—*Indebit. assumpsit* for another 100 l. for so much money had and received by defendant for plaintiff's use.

The Modern Practice of the

FOURTH COUNT.—*Indebit. assumpsit* for another 100l. for so much money before that time paid, laid out, and expended by the said plaintiff for defendant.

To plaintiff's damage 200l.

PLEA.—THE GENERAL ISSUE *non assumpsit*.

CASE.—*Here insert Case, intitling it Plaintiff or Defendant's case, as it may happen to be.*

PROOFS OF CASE.

PROOFS of answers to objections made by defendant to plaintiff's case.

The Brief, when fair copied for delivery to counsel, must be indorsed to this effect:

A. B.	}	Brief for the plaintiff. (or as the case may be).
against		
C. D.		

Mr. serjeant B. 5 guineas.
Mr. L. on the same side.

Stands twentieth in his Lordship's paper for the sittings after *Easter Term* at *Guildhall, London*.

R. R.

plaintiff's attorney.

Note.

It is now usual to give your leading counsel, if within the bar, a guinea *per sheet*, if a matter of importance, and tried by a special jury. This mode of seeing is extended sometimes to five or ten guineas. The junior counsel is usually paid half a guinea every brief sheet.

TRIAL

T R I A L.

When the cause is in the paper for trial, it is the duty of the plaintiff and defendant's attorney, to attend the court to see how the causes go off; to take care that their counsel and witnesses have early notice when the cause is coming on, that they may be ready to perform their respective duties.

If the plaintiff's attorney is absent when cause is called on, the cause may be struck out of the paper by order of the court, and he or his client be subjected to pay the costs of the day, for not trying cause according to notice, or he may be nonsuited.

If defendant's attorney is absent, his client will loose the benefit of his case in defence, and sustain costs.

The court will hear no excuse for the absence of plaintiff's or defendant's attorney, when their duty requires them to be present. They are allowed in their bill for their attendance while cause is in the paper, and till tried, and it is expected and imagined by court that they do attend.

COSTS of trying cause in London or Middlesex.

	l.	s.	d.
Summoning jury	0	4	6
Hall keeper	0	3	6
Jury	0	8	0
Door and bar keepers	0	3	6
Tipstaff	0	3	6
Clerk of the N. P.	0	11	0
Crier	0	10	0
Marshal, &c.	0	14	8
	<hr/>		
	2	18	8
Q 2	These		

The Modern Practice of the

Note.

These costs are paid by plaintiff when he obtains a verdict. The defendant pays 10s. 6d. when a verdict goes against him,—and so *vice versa*.

COSTS paid by plaintiff on cause being referred in London or Middlesex.

	l.	s.	d.
Summoning jury - - -	0	2	6
Hall keeper - - -	0	2	0
Door and bar keepers - - -	0	2	0
Jury - - -	0	4	0
Tipstaff - - -	0	2	0
Clerk of the N. P. - - -	0	16	0
Crier - - -	0	8	0
Marshal, &c. - - -	0	11	4
	2	7	10

The same costs are paid by defendant on the cause being referred.

The costs of nonsuit about £ 2 1 0

The COSTS of trying cause, &c. at the assizes differs but little from the above.

Note.

The fees vary according to the number of exhibits produced in court as evidence on the trial of the cause.

Note.

If a special jury, the party moving for same pays them.

Trial at Bar.

To obtain trial at bar, party requiring same must move court for a special jury; pay counsel for moving 10s. 6d. and rule will be made by court for sheriff to attend Mr. Benton with freeholder's book, at the expence of the party moving same. Draw up rule with Mr. Cooper; pay for same 4s. 6d. and serve copy on the attorney on the other side. Mr. Benton, in the presence of both attornies, will name out of book forty-eight freeholders, twelve of whom shall be struck out on each side, and the remaining twenty-four returned by the sheriff. If either attorney neglects to attend, master shall strike out

out twelve in behalf of the absent party. The party that moves for Special jury, may at same time move for a View, if necessary, and one rule will do for both. In that part of rule which directs a view, the court orders that a *distingas* issue directed to sheriff, with a clause therein commanding him to cause six or more of the jury returned and named in writ, to take a view of the matters in question previous to trial. By consent of parties, or without, by rule or judge's order, a person on each side may be appointed to shew the premises in question to the jury appointed to view same; the expence of view is to be borne equally by both parties, and neither must offer any evidence to the jury on view.

Day of trial must be appointed by the court, and may be countermanded by plaintiff's attorney, who cannot then try same till a fresh day appointed by court. Practical remarks on trials in general

No trials at bar allowed in issuable terms.

Each juryman out on view, is to be allowed for every day and night 3 s. 4 d. for diet, besides lodging. Two tipstiffs, and one crier *per day* and night, 2 s. each. *Mich. 1654.*

Jurors may be challenged, if under the least degree of influence, interest, or bias. 3 *Bur.* 1856.

Local actions may be tried in the next adjoining county, if the matter cannot be fairly tried in the proper county by leave of court, but there must be facts suggested on the roll, sufficient to warrant the conclusion. 3 *Bur.* 1330.

Trials cannot be put off, unless such delay tends to advance justice. 3 *Bur.* 1516.

If verdict goes for party moving for special jury, all expences except actual striking jury, are taxed and allowed against the losing party.

Strange 1030.

No rule for trial at bar before issue joined.

Strange 696.

No trial at bar in a cause arising in London.

Strange 856.

The Modern Practice of the

Trial by *proviso* is where plaintiff does not proceed to trial according to the course of the court. No trial can be had by *proviso* in *London* or *Middlesex*, till plaintiff has made default after issue is entered on record; nor in a country cause, till plaintiff has made default in trying his cause the next assizes after issue entered. *Gilbert K. B. 351.*

To try cause by *proviso*, defendant must get rule, for plaintiff to reply, and enter issue, from *Mr. Benton*, for which he does not charge, and enter same with *Mr. Cooper*; pay for entering 1s. 10d. and serve copy on plaintiff's attorney, who must enter issue within time of rule, and give defendant's attorney number of roll. Issue being entered, defendant may have a *venire* by *proviso*. If plaintiff does not enter issue in time, defendant signs a *non prof.* and taxes costs. If plaintiff is straitened in time, he may have summons before a judge for further time to enter issue.

Modern
practice, in-
stead of pro-
viso.

Trials by *proviso* is now out of use, and if plaintiff in any action neglects to bring such action on to be tried, court at any time on motion in open court (*due notice having been given plaintiff thereof*) will give judgment for defendant, as in case of a nonsuit, unless sufficient cause shewn to the contrary, when court will grant time; but if plaintiff neglects to try cause within the time allowed, will give judgment as aforesaid. 14 Geo. 2.

To obtain judgment on this statute, give notice of the motion, and on affidavit of the state of the proceedings, and plaintiff's default, and also of the service of notice of motion; upon reading same, issue having been entered, and roll brought into court, court will make a rule *nisi* for defendant, as in case of nonsuit.

Practical re-
marks.

In a joint action, where one defendant lets judgment go by default, and the other obtains judgment

judgment under this statute, he cannot have his costs as in case of nonsuit. *Bur. Rep.* 359.

If defendant carries down cause, he must give plaintiff same notice of trial as in the common cases, only add in notice, *by proviso*. If not tried or countermanded in time, plaintiff will be intitled to costs against defendant, which he may obtain in the usual way. Notwithstanding defendant gives plaintiff notice, plaintiff may likewise give notice and try cause; for defendant's right of trying same arises only on plaintiff's neglect.

Defendant, before he tries cause, must get rule at Mr. Cooper's; pay for same 5 s. purport of rule is, *Let there be made a record of nisi prius by proviso, if the plaintiff hath made default.*

Both plaintiff and defendant may carry down cause for trial at the same time; but same must be tried by plaintiff's record, if he enters it in due time; if he omits so to do, or refuses, defendant may try cause by his record.

Defendant cannot try cause without the rule *General re-* let, &c. if he does, and obtains verdict, court, *marks on* on motion, will set it aside. *Strange* 1055. *records.*

When cause called on for trial, defendant hath a right to call for record, and if a mistake in same, may refuse to make defence. Plaintiff, to avoid a nonsuit and costs, must refuse to pray *tales*, and though jury sworn, if no *tales* prayed, court in aid of plaintiff, will suffer cause to remain for want of jurors. *Strange* 707.

If record agrees with declaration delivered, a variance from issue will not vitiate same. *Strange* 1131.

Court on motion, and affidavit of the fact, will permit plaintiff to make up a new record, the old one being lost. *Strange* 141.

After verdict, any defect in record cured by the statute of *jeofails*.

On

On motion and affidavit of fact, court will grant an attachment against any witness for non-attendance, being personally served with *sub-pœna* in a reasonable time before trial, if sufficient charges of attendance tendered him on such service, but not otherwise. 2 *Strange* 1150.

P O S T E A S.

Form of
Poſtea in
caſe, on de-
fault for
plaintiff.

AFTERWARDS, that is to ſay, And at the place within mentioned, before *William* Lord *Mansfield* the Chief Juſtice within written, *John* *Way*, Gentleman, being associated unto the ſaid Chief Juſtice by force of the ſtatute in that caſe made and provided, the within *A. B.* plaintiff, came by his attorney within contained, and the within *C. D.* defendant, although ſolemnly required, came not, but made default, therefore let the jurors of the jury within mentioned be taken againſt him by his default: And the jurors of the jury being ſummoned came, who, to ſay the truth of the within contents, being choſen, tried, and ſworn, ſay, upon their oaths, That the within-named *C. D.* did aſſume and promiſe in manner and form as the within-named *A. B.* within complains againſt him: And they aſſeſs the damages of the ſaid *A. B.* by occaſion of the not performing the within-mentioned promiſes and aſſumptions, over and above his coſts and charges by him about his ſuit in this behalf expended, to pounds, and for thoſe coſts and charges to forty ſhillings: Therefore, &c.

Poſtea for
default at
aſſizes.

AFTERWARDS, that is to ſay, on the day, and at the place within mentioned, before (*here insert the juſtices of aſſize, as deſcribed in commiſſion*) juſtices of our ſaid Lord the King, aſſigned to take the aſſizes in the ſaid county of
by force of the ſtatute in that caſe made and provided,

vided, the within-named *A. B.* plaintiff, &c.
as in a town cause.

AFTERWARDS, &c. (*as before*) come as Postea in well the within named *A. B.* plaintiff, as the case on ver- within named *C. D.* defendant, by their attor- dict. nies within contained, and the jurors of the jury being summoned, came to declare the truth of the matter within contained, and being chosen, tried, and sworn upon their oaths, say, That, &c. as in former postea, *mutatis mutandis*.

_____ say, upon their Postea on oaths, That the within named *C. D.* the defen- plea of nil dant, doth owe to the within-named *A. B.* the debet. plaintiff, the _____ pounds within mentioned, in manner and form as the said *A. B.* within complains against him; and they assels, &c. as in former.

_____ say, upon their Postea in oaths, That the within named *C. D.* the defen- trespass. dant, is guilty of the premises within laid to his charge, in manner and form as the said *A. B.* the plaintiff within complains against him; and they assels, &c. as in former.

_____ say, upon their Postea in oaths, That the said *C. D.* the defendant is ejectment. guilty of the trespass and ejectment within written, in manner and form as the said *A. B.* plaintiff within complains thereof against him; and they assels, &c.

_____ say, upon their Postea oaths, That the said *C. D.* the defendant, as to where guilty the trespass and ejectment of one moiety of the ty as to part only. within-written tenements, is guilty thereof, as the said *A. B.* plaintiff within complains against him; and they assels, &c. (*as before*) And as to the

the trespass and ejectment of the other moiety of the tenements within written, the said jurors say upon their oaths, That the said *C. D.* is not guilty thereof, as the said *A. B.* has by his within pleading alledged: Therefore, &c.

Postea for
plaintiff on
an issue of
plene admi-
nistravit.

_____ say upon their oaths, That the said *C. D.* the defendant hath, and on the day of exhibiting the bill of the said *A. B.* the plaintiff within written, to wit, On the day _____ of _____ in the _____ year of the reign of our Sovereign Lord the present King, *(this must be the day laid in declaration that defendant had assets)* had divers goods and chattels which were of the said *E. F.* the testator, at the time of his death, in the hands of the said *C. D.* to be administered to the value of the debt within specified, whereof he might have made satisfaction to the said *A. B.* for his said debt, to wit, at *London (or wherever venue laid)* within contained; and they assess the damages of the said *A. B.* on occasion thereof, besides his expences and costs by him, &c.

Postea on an
assumpsit,
part for
plaintiff,
part for de-
fendant.

_____ as to the first and last promises in the declaration within contained, they say upon their oaths, That the said *C. D.* undertook, in manner and form as the said *A. B.* within complains against him; and they assess, &c. And as to the residue of the promises and undertakings in the said declaration also within contained, the said jurors further upon their oaths say, That the said *C. D.* did not undertake in manner and form as the said *C. D.* within by pleading for himself has alledged: Therefore, &c.

Postea for
defendant on
not guilty in
trespass.

_____ say upon their oaths, That the said *C. D.* is not guilty of the trespass in the declaration within mentioned, as
the

the said C. D. hath by his pleading within alledged: Therefore, &c.

_____ say upon their Postea in oaths, That the said C. D. is guilty of the trespass, That the said A. B. hath where one defendant guilty, and others not. pass within mentioned, as the said A. B. hath within thereof complained against him; and they assels, &c. And the said jury further upon their said oaths say, That the said E. F. and G. H. the other defendants, are not guilty of the said trespass as the said E. F. and G. H. within by pleading have for themselves alledged: Therefore, &c.

_____ say upon their Postea for oaths, That the within named C. D. (*the testator*) did not in his lifetime undertake in manner when executor, that his testator non assumpsit. and form as the said A. B. hath within declared against him, &c.

_____ say upon their Postea for oaths, That the said C. D. did not at any time defendant on the statute of limitations pleaded. within six years next before the suing out the said writ (*here insert charge in declaration against defendant.*) &c.

_____ and the jurors Postea on of that jury being summoned came, who, to nonsuit. say the truth of the matters within contained, were chosen, tried, and sworn, and after evidence being given them, of upon and concerning the matters within contained, went from the bar of this court to consult of their verdict of and upon the said premises; and after the said jury had so consulted and agreed among themselves, they returned to the said bar in order to give their verdict in this behalf, upon which the said A. B. being solemnly required, came not, nor did he further prosecute his said bill against the said C. D. Therefore, &c.

were

**Postea where
a juror is
withdrawn.**

_____ were chosen, tried, and sworn to declare the truth of the matters within contained, whereupon, for certain cause moving as well the said Chief Justice, as the said plaintiff and defendant, *E. F.* one of the jurors of the within-mentioned jury was withdrawn from the panel thereof, and the residue of the jurors of that jury are entirely discharged from giving any verdict of and concerning the premises within mentioned, &c.

**Postea with
a tales in
town for
defendant.**

_____ And the jurors of the jury being summoned, some of them, namely, (*here insert such of the jury as appear*) come and are sworn upon that jury, and because the residue of the jurors of the same jury did not appear, therefore other persons of those standing by the court by the sheriff of the county aforesaid, at the request of the said *A. B.* the plaintiff, and by the command of the said Chief Justice, are newly set down, whose names are affixed in the within-written panel, according to the form of the statute in that case made and provided; which said jurors so newly set down, namely, (*here insert the tales men by name*) being likewise called, come, who, together with the said other jurors before impanelled and sworn to declare the truth of the matters within contained, being elected, tried, and sworn upon their oaths, say, That the within named *C. D.* did not undertake in such manner, &c.

**Postea with
a tales in a
country
cause.**

The same form in *postea with tales*, in a cause tried at the assizes, only describe the justices of assize as directed under common *postea* in a country cause.

By these forms, the young practitioner may draw up any *postea*, only altering same according

ing to the nature of the action in which he must be governed by the wording of the issue.

Posseas with *tales* are now seldom wanted Note. but on special jury causes, where it sometimes happens that twelve out of the twenty-four do not attend.

In *London* or *Middlesex*, associate delivers *possea* Observa- with *disfringas*, and panel annexed to plaintiff tions. or defendant's attorney (*whichever obtains a ver- dict*) immediately. At the assizes, associate keeps same till next term, and in the *interim* in- dorces *possea* thereon. *Posseas* in country causes must be marked by Mr. *Walter*, clerk of the *posseas*, within two days after received from associate. Pay clerk marking same 4 d.

Rule may be given the term after assizes; same rule as in a town cause; but final judgment cannot be signed till *possea* complete; when complete, sign final judgment, and tax costs as in a town cause.

In *London* or *Middlesex*, attorney may give a rule for judgment on the evening of the day on which cause is tried, if in term, or on the first day of succeeding term, if tried at the sittings after term. The same method and rule is ob- served on inquiries. This rule is given with Mr. *Cooper*, for which you pay him 1 s. 10 d. and deliver to him or his clerk the following short note of cause and business.

A. against B.	}	Rule on <i>possea</i> or inquiry (as the Rule for case may be). judgment.
---------------------	---	--

R. R.

August 1772.

plaintiff's attorney.

This is a four-day rule, exclusive of the day given; if *Sunday* intervenes, it is no day in rule, because court have determined that the party whom it affects, shall have four whole

R

court

court days to seek relief, (*if necessary*) so that party giving rule on either, cannot sign final judgment till afternoon of sixth day, and if *Sunday* intervenes, till seventh day.

Pending this rule, in *London or Middlesex*, it is usual for the attorney who hath obtained *poslea* or inquiry, to get same stamped; they are stamped on the back with a double half crown stamp, at Stamp Office in *Lincoln's Inn*. If on verdict, indorse *poslea* on back of record, according to nature of the case, (*as directed under head of Posleas*); carry same to Mr. *Walter* in the King's Bench office, who will mark same thus: *Delivered of record such a day and year*, and signs his name; pay him 6d. entering. Inquiry hath nothing indorsed; and the double half crown stamp is for Mr. *Benton* to sign final judgment on. When rule on *poslea* or inquiry is out, carry them with papers in the cause to Mr. *Benton*, who will sign final judgment in either case, and tax costs, which are called costs *de incremento*, or increased costs, when execution against the party may be taken out.

If the party against whom a verdict is obtained by trial or inquiry, has a mind to be present on taxing costs on final judgment, he must get rule from Mr. *Cooper* to be present at taxing costs; pay for rule 4 s. It must be served on the attorney on the other side, and should be taken out and served before rule is out, or execution may issue against the party. If final judgment is not signed, and party takes out and serves rule to be present, &c. after rule for judgment is out, the attorney is not obliged to give him more than three or four hours notice of taxing costs; but if taken out and served before rule for final judgment is expired, attorney on the other side must give twenty-four hours notice when he intends to tax costs.

If the party against whom a verdict is obtained on trial or judgment on inquiry, would have a new trial or inquisition, or would arrest judgment on either, he must do it pending the rule, or before final judgment signed.

Directions for obtaining a new trial, or moving in arrest of judgment.

This is done by motion of court, supported on affidavit of the facts. If new trial or inquisition is denied, party may afterwards move on affidavit to arrest judgment in either case; but if the motion in arrest of judgment is first tried and denied, party moving same cannot afterwards by motion obtain new trial or inquisition.

To move in arrest of judgment on *posse* or inquiry, party must first move for rule to bring *posse* or inquisition into court. This rule must be drawn up with Mr. Cooper; pay for same 5s. and serve copy on attorney on the other side; this done, affidavit must be made of service of rule, and that annexed to affidavit of ground on which you move in arrest of judgment; it must be given to counsel with 1l. 1s. and he will move same.

If plaintiff be suspended for a year by injunction of court from taking out execution, he must have a *sci. fa.* to revive judgment. The year by the statute of *Westminster* must be computed by calendar months.

Practical remarks.

In trespass against two for rent, where one suffers judgment by default, and the other pleads a distress for rent and a licence from plaintiff to sell goods, judgment arrested against both. *Strange* 610.

Plaintiff or defendant on obtaining final judgment in case, on verdict or inquiry, may bring an action of debt on such judgment, and proceed to judgment and execution thereon. This is frequently done where the sum recovered is but small, and defendant is likely to stand his ground, because plaintiff cannot upon levy, oblige defendant to pay more than costs taxed,

The Modern Practice of the

but on judgment in debt, defendant must pay all costs.

Court will not arr. st judgment on a matter that the party might have availed himself of before issue joined. 3 Burr. 1725.

PROCEEDINGS on Cause being referred.

Apply to Mr. Minsbull, clerk of the *nisi prius*, who is to be met with at Lord Mansfield's house or chambers, for order of *nisi prius*; if one cause referred only, he charges for the order 4s. 6d. if more, his charge for same is in proportion to its length.

Such witnesses as plaintiff or defendant proposes to examine on the reference, their respective attornies set down on a piece of paper, and deliver their names to the crier of the court, who will immediately after trial, upon the witnesses being brought up to the bar of the court, swear same. Each party pays 2s. to the crier for every witness sworn to give testimony on their behalf.

Form of order of reference where one cause referred.

London, to wit,

or wherever venue laid.

At the sitting of *nisi prius*, held at in and for the on the

day of 1772, and in the 12th year of the reign of our Sovereign Lord George the Third, now King of Great Britain, &c. before the Right Honourable William Lord Mansfield, Lord Chief Justice of our said Lord the King, assigned to hold pleas in the court of our said Lord the King, before the King himself, (or if at assizes, before the judges of assize).

A. against

A. } IT IS ORDERED by the court, by
 against } and with the consent of the plaintiff
 B. } and defendant, their counsel and
 attornies, That the last juryman sworn and im-
 panelled in this cause be withdrawn out of the
 panel, and that all matters in difference be-
 tween the said parties in this cause be referred to
 the award, order, arbitrement, final end and
 determination of S. P. of, &c. so as he shall make
 and publish his award in writing of and concern-
 ing the premises in question between the said
 parties, on or before the day of
 term next ensuing: And that the said parties
 shall and do perform, fulfil, and keep such
 award so to be made by the said arbitrator as
 aforesaid: AND IT IS ALSO ORDERED by
 and with such consent as aforesaid, That the
 costs of this suit, and also the costs of the said
 arbitration are to abide the event of the said
 award, and that the said arbitrator do direct
 and award by whom, and to whom, and in
 what manner the same shall be paid: AND IT
 IS LIKEWISE ORDERED by and with such
 consent as aforesaid, That the plaintiff and de-
 fendant respectively, are to be examined upon
 oath to be sworn before the said Lord Chief
 Justice, or some other Justice of the court of the
 said Lord the King, before the King himself, if
 thought necessary by the said arbitrator; and do
 produce before the said arbitrator, all books,
 papers, and writings touching and relating to
 the premises, as the said arbitrator shall think
 fit: And that the witnesses for the plaintiff and
 defendant respectively, are to be examined upon
 oath to be sworn before the said Lord Chief
 Justice, or one other Justice of the court of the
 said Lord the King, before the King himself:
 AND IT IS ALSO ORDERED, by and with
 such consent as aforesaid, That neither the
 plaintiff or defendant shall prosecute any
 R 3 action

The Modern Practice of the

action or suit in any court of law or equity against the said arbitrator, or bring or prefer any bill in equity against each other of and concerning the premises so as aforesaid referred: AND IT IS FURTHER ORDERED, by and with such consent as aforesaid, That if either party shall, by affected delay, or otherwise wilfully prevent the said arbitrator from making an award, he shall pay such costs to the other as the court shall think reasonable and just: AND LASTLY, IT IS ORDERED, by the like consent as aforesaid, That the court of the said Lord the King, before the King himself, may be prayed that this order may be made a rule of the same court.

John Minshull,
clerk of the *nisi prius*. }

By the court,

Form of order of reference where several causes referred.

A. } _____ and that
against } all matters in difference between
B. } the said parties in this cause, and
also in } other causes now at issue between the
same parties in this honourable court, for (*mention cause of actions*) be referred, &c. AND IT IS FURTHER ORDERED, by and with such consent as aforesaid, That the costs of this cause, and also the costs of the said other causes respectively, and of the arbitration, are to be in the discretion of the said arbitrator, &c. and that the witnesses for the plaintiff and defendant in the said causes respectively, are to be examined upon oath, to be sworn before, &c. &c.

Note of witnesses to be sworn.

A. } A. the plaintiff, and C. D. E. F. &c.
against } produced by the plaintiff, were severally sworn to give evidence before the arbitrator in this cause touching all matters in difference to him referred this day of 1772, before

Mansfield, or judge before whom sworn.
Note; Same form for defendant.

It

It is best for both attornies to get their witnesses sworn in court, or otherwise their clients must be at the expence of bringing their witnesses before a judge to be sworn. In either case, the above is the proper form of note for swearing witnesses. Observation.

It is usual for plaintiff's attorney to get an appointment from arbitrator, which, when obtained, he inserts at the bottom of the order of reference thus:

I do appoint <i>Thursday</i> the	day of Arbitrator's
this instant at	o'clock in the appointment
morning, at the sign of the	tavern, in
street, kept by Mr.	to sit on reference.
upon the matters and things above referred to	
me. Dated of	1772.
Witness	G. P.
R. R. <i>plaintiff's attorney.</i> }	

When plaintiff's attorney gets the appointment of day of reference from the arbitrator, Practical remarks. he delivers to him an exact copy of the order of reference, and also a short brief of his client's case, with the names of the witnesses sworn to be examined thereto. His next step is to serve defendant's attorney with an exact copy of order of reference, and arbitrator's appointment thereon; this should be examined carefully with the original order and appointment by the person who serves it, in order that he may be able to make an affidavit thereof, if necessary.

Defendant's attorney also furnishes arbitrator with a short brief of his client's case, and names of witnesses sworn in support of same.

On day of reference, it is settled between the attornies on both sides, and arbitrator, how they shall proceed, and whether the parties themselves shall or shall not be present during the examination of the matter. This done, plaintiff's attorney

The Modern Practice of the

attorney opens his client's case to arbitrator, calls his witnesses, and examines them in support of same, and then defendant's attorney enters upon his defence in the same manner.

Both parties have a right to cross examine the witnesses on the other side during their examination, and on summing up the evidence, have a right to reply to any matters offered against the case made out on evidence for their respective clients.

The arbitrator takes minutes of the evidence offered on both sides, and generally appoints a future day for making his award in writing.

If either party is fearful that arbitrator has not been correct or attentive in taking down the evidence given before him, he has a right to deliver him a short brief of the evidence offered on both sides, to aid him in making his award; but in this case, party must be careful to offer nothing to arbitrator but what was actually given in evidence before him, lest any apparent fallacy should prejudice his client's cause in the breast of arbitrator, whose award is decisive between the parties, unless it can be clearly proved to the court he has made an award in direct opposition to evidence.

Arbitrator's attorney draws up the award from the minutes taken by arbitrator.

If the business is long and intricate, arbitrator may adjourn the matter referred, as suits his conveniency, so that he makes his award within the time limited by order of reference.

It is most prudent for arbitrator's attorney to give the attorneys on both sides notice in writing of these adjournments, that they may have no pretence for non-attendance, or room to suspect the least partiality in arbitrator.

If arbitrator cannot, or does not, make his award within the time limited by order, either party, on affidavit of the reasons why same is not done,

done, may on motion of court procure an enlargement of the time. The party moving to enlarge time must give the other a written notice of his intention, and on motion must annex an affidavit of service thereof to the former affidavit. If court grants further time, party moving same draws up a rule with Mr. Cooper, and pays for same 5 s. a copy of which is to be served on arbitrator; and on his fixing a further time to sit on the business, must also, together with a copy of his appointment, be served on the attorney on the other side.

TO ALL TO WHOM *these presents shall* Form of
come, G. P. of, &c. SENDETH Greeting: award.

WHEREAS at the sitting of *nisi prius*, held at
in and for the on the
day of one thousand seven hundred
and seventy-two, and in the twelfth year of the
reign of our Sovereign Lord George the Third,
now King of Great Britain, and so forth, before
the Right Honourable William Lord Mansfield,
Chief Justice of our said Lord the King, before
the King himself, a cause came on to be heard
between A. B. plaintiff, and C. D. defendant:
And it was ordered by the said court, by and
with the consent of the plaintiff and defendant,
their counsel and attornies, that the last jury-
man sworn and impanelled in the said cause,
be withdrawn out of the panel, and that all
matters in difference between the said parties in
the said cause be referred to the award, order,
arbitrement, final end and determination of the
said G. P. in the said order of *nisi prius*, called
G. P. of, &c. so as he should make and publish
his award in writing of and concerning the pre-
mises in question between the said parties on or
before the day of term then
and now next ensuing, and that the said parties
should

should perform, fulfil, and keep such award so to be made by the said arbitrator as aforesaid: And it was also ordered by and with such consent as aforesaid, that the costs of the said suit, and also the costs of the said award, should abide the event of the said award, and that the said arbitrator do direct and award by whom, and to whom, and in what manner the same should be paid: And it was likewise ordered by and with such consent as aforesaid, That the plaintiff and defendant respectively were to be examined upon oath to be sworn before the said Lord Chief Justice, or some other Justice of the court of the said Lord the King, before the King himself, (*if thought necessary*) by the said arbitrator, and should produce before the said arbitrator, all books, papers, and writings touching and relating to the premises, as the said arbitrator should think fit; and that the witnesses for the plaintiff and defendant respectively, were to be examined upon oath to be sworn before the said Lord Chief Justice, or some other Justice of the court of the said Lord the King, before the King himself: And it was also ordered by and with such consent as aforesaid, That neither the plaintiff or the defendant should prosecute any action or suit in any court of law or equity against the said arbitrator, or bring or prefer any bill in equity against each other of and concerning the premises so as aforesaid referred, as by the order of *nisi prius* made on the hearing of the said cause, relation being thereunto had, it may more fully appear: NOW THESE PRESENTS WITNESS, That I the said G. P. the arbitrator named and appointed in and by the said order of *nisi prius*, having duly taken upon me the burthen of the above arbitration, and having been attended by the attorney for the plaintiff A. B. and the attorney for the defendant C. D. and fully heard their several allegations

gations on behalf of the said plaintiff and defendant respectively, and having examined the said plaintiff and defendant respectively upon oath, and strictly examined their, and each and every of their witnesses severally on oath, touching the matters to me above referred, and having maturely and deliberately weighed and considered the evidence, proofs and allegations on behalf of each of the said parties, and carefully perused all the accounts, papers, and writings touching the said matters in question, which they the said parties have respectively thought proper to lay before me for my inspection, DO in obedience to the said order of *nisi prius*, make this my award in writing of and concerning the premises to me referred as aforesaid, in manner following. That is to say, FIRST, I do award and order that the said *C. D.* his heirs, executors, or administrators, some or one of them do and shall on *Monday*, the day of one thousand seven hundred and seventy-two, at the house of Mr. attorney at law, situate in *Cheapside*, *London*, between the hours of twelve of the clock at noon, and one of the clock in the afternoon, well and truly pay, or cause to be paid, to the said *A. B.* his executors, administrators, or assigns, the sum of seventeen pounds seven shillings and ninepence, of good and lawful money of *Great Britain*, together with his the said *A. B.*'s full costs of the said suit herein before mentioned, to be in the meantime taxed by the proper officer of the said court; and that immediately after payment thereof, they the said *A. B.* and *C. D.* shall execute general releases each to the other of them of all actions, suits, costs, claims, and demands whatsoever, from the beginning of the world, to the said day of one thousand seven hundred and seventy-two: AND I do award and order, that each of them the said

The Modern Practice of the

A. B. and C. D. shall bear and pay his respective charges and expences attending this arbitration: AND LASTLY, I award that the charges incurred by me relating to this arbitration, and making this my award, amounting to the sum of *shall immediately after the delivery of this my award, be paid to Mr. D. E. my attorney employed in this arbitration, one half thereof to be paid by the said A. B. and the other half thereof to be paid by the said C. D. IN WITNESS whereof, I the said G. P. have to two parts of this my award set my hand and seal, this* *day of* *in the twelfth year of the reign of our Sovereign Lord George, &c. and in the year of our Lord 1772.*

Signed, sealed, published, and declared by the said G. P. as and for his award, (being first duly stampd) in the presence of

G. P. (L. S.)

T. H.

W. G.

Observations.

It is usual, on award's being drawn up, for arbitrator's attorney to give the attornies on both sides notice of its being ready for delivery, that each may take away his part, and pay for same. If party in whose favour award is made, takes his part, and the other neglects coming to receive his, it will be necessary for the winning party to get arbitrator to tender, or cause to be tendered, his award to the losing party, in order that upon refusal to accept same, a rule may be obtained on affidavit to make the order of reference a rule of court. This rule is drawn up by Mr. Cooper; pay for same 5 s. and serve a copy on refractory attorney.

Note.

The costs at law are taxed by the master on the order of *nisi prius*, and he is governed by same in such taxation.

li

If order not complied within within the time directed by rule on affidavit of service, move for an attachment against the party, and draw up order thereon with Mr. *Cooper*; pay for same 5 s. carry this order to the Crown Office, and bespeak attachment; pay for same 13 s. 4 d. get warrant thereon at the Sheriff's Office of the county where the party to be attached resides. If he is taken on attachment, court will not discharge him till he has fully complied with the award, and satisfied all costs incurred through his contempt.

After award made, the party in whose favour Note, same is given, takes record from Mr. *Minsbull*, indorses *postea* and completes judgment.

JUDGMENT *on* NON PROS, *and by* CONFESSION.

NON PROS.

If plaintiff does not declare against defendant in two terms after writ sued out, *viz.* before the end of second term of which writ was returnable, (*if defendant is not in custody*) he must take out rule from Mr. *Cooper* for further time to declare; if in term, he may have further time till last day of term; if in vacation, till the first day of subsequent term. You pay at Mr. *Cooper's* office 4 s. for these rules. A copy must be served on defendant's attorney.

Observations
on Non pros
by bill.

If this step is not taken in due time, defendant may sign a *non pros* against plaintiff for want of declaration.

Plaintiff is liable to a *non pros*, if he does not enter issue and bring in record in due time after being served with rule for that purpose by defendant; and the same, if he neglects to reply, &c. in special pleading, after being served with rule by defendant so to do, and a demand in writing.

S

The

On non pros
by original.

The defendant must before the end of second term, or within four days after, enter a rule with Mr. *Cooper* for plaintiff to declare and demand a declaration in writing of plaintiff's attorney, thus:

K. B.

A.
against
B.

S I R,

The defendant demands a declaration in this cause, otherwise judgment.

To R. T.	}	Your's, &c.
plaintiff's attorney.		R. R.
		defendant's attorney.
8th Nov. 1772.		

Note.

If plaintiff does not declare before rule is out, (*it being a four day rule*), defendant having demanded declaration as aforesaid, may at any time before the effoign day of subsequent term, sign a *non pros* for want of declaration, but not afterwards.

Manner of
signing non
pros.

You sign *non pros* in same manner as interlocutory judgment, *viz.* by making *incipitur* of declaration on sheet of treble penny, and same on King's Bench roll; carry them with declaration to Mr. *Caley*, who will sign judgment; he charges for same according to the length of proceedings.

What it is.

A *non pros* is in the nature of a final judgment, for the costs defendant hath sustained by plaintiff prosecuting his suit against him without effect, defendant on signing *non pros*, hath his costs taxed by Mr. *Benton*, and may then take out execution for the same, as on final judgment, or he may bring an action for such costs against the plaintiff.

C O N F E S S I O N .

Where defendant hath no real defence to judgment by action brought against him, it is usual to apply confession. to plaintiff's attorney, and offer a *cognovit*. This saves defendant the expence of inquiry, and puts plaintiff into the possession of a final judgment, without the expence and trouble of prosecuting the suit thereto.

It behoves plaintiff's attorney, in taking *cognovit*, to restrain defendant from bringing error or bill in equity on such judgment. If the action is in case, it is most adviseable for plaintiff's attorney to take a warrant of attorney, to confess judgment for the debt and damages; in which he must draw the confession in debt, which will intitle his client to the costs of entering up and executing judgment.

A *cognovit* may be wrote on draft, declaration, or on plea, demurrer, &c. and should be witnessed by defendant's attorney, to shew it is the act of his client with his advice.

I the said C. D. do hereby withdraw the above Form of demurrer, and consent that the plaintiff take *cognovit* on judgment for the debt of l. declared on, demurrer.

besides l. for damages and costs of suit, so that execution be stayed until (*the time agreed by plaintiff to allow defendant to pay debt and costs*): And I do hereby consent not to bring any writ of error or bill in equity on such judgment; and do submit that this my consent be made a rule of his Majesty's court of King's Bench at *Westminster*, if the court shall so please. As witness my hand, the day of

1772.

Witness

R. R. defendant's attorney.

S 2

C. D.

To

Warrant of
attorney to
confess judgment.

To (here insert two or three attorneys names of K B.) attorneys of his Majesty's court of King's Bench, at Westminster, jointly and severally, or to any other attorney of the same court.

THESE are to desire and authorise you, the attorneys abovenamed, or any of you, or any other attorney of the court of King's Bench aforesaid, to appear for me C. D. of, &c. in the said court, as of this present Michaelmas Term, Hilary Term next, or any other subsequent term; (*this must be varied according to the circumstances of case, viz. if made in vacation, and you want to enter up judgment in vacation, you must insert the term preceding that vacation*); and then and there to receive a declaration for me in an action of debt for l. (generally double the sum due) for money lent at the suit of A. B. of, &c. And thereupon to confess the same action, or else to suffer a judgment by *non sum informatus*, or otherwise to pass against me in the same action; and to be thereupon forthwith entered up against me of record, as of this present Michaelmas Term, Hilary Term next, or any other subsequent term for the said (l.) besides costs of suit: And for your so doing, this shall be to you, or one of you, a sufficient warrant and authority: And I do hereby consent to bring no writ of error or bill in equity, on any judgment to be entered up against me by virtue of these presents: And I do submit that this my consent shall be made a rule of the said court of King's Bench, on the first, or any other day of term next. In witness whereof, I the said C. D. have hereunto set my hand

hand and seal, this
1772.

day of

Sealed, &c.

C. D. (L. S.)

J. T.

R. S.

This warrant of attorney must be ingrossed on a sheet of half crown stamped paper.

BE IT REMEMBERED, That it was agreed between the parties within named, at the time of the execution of the within-written warrant, that the same was made and given for securing the payment of the sum of (*the real sum, interest, and costs due*) on a certain promissory note, bearing date the day of last, under the hand of the said C. D. for payment of l. to one Mr. E. G. or order, and by him indorsed to the said A. B. And it is further agreed, between the said parties, that no judgment shall be entered up by virtue of the within written warrant of attorney, until the day of next, unless the life of the said C. D. is despaired of. In witness whereof, the said parties within named have hereunto set their hands the day and year within written.

Defeasance to be indorsed on back of warrant.

Witness

A. B.

J. T.

or R. R. his attorney
for him.

R. S.

This defeasance must be varied according to the nature of the case. *Practical remarks.*

Non pros may be signed by defendant at any time after second term, altho' declaration is tendered by plaintiff before same is signed. 12 Mod. 217.

It is the most safe way for plaintiff, when he takes *cognovit* from defendant to let his (*defendant's attorney*) witness same.

A warrant of attorney given after continuance day of term, to enter up judgment of pre-
S 3 ceding

ceding term, is good, if the warrant is dated of such term judgment is to be entered of; but otherwise if given to confess judgment generally, and dated after. 1 *Vent.* 113.

If given to be entered of a certain term, it must be entered of such term, or the judgment may be set aside. 1 *Mod.* 1.

If warrant given to confess judgment generally, or of any particular term, or any other subsequent term, it may be entered of any subsequent term; but if not entered within four terms next after the date of warrant, court must be moved on affidavit made of due execution of warrant, that defendant is living, and that debt or part thereof is unsatisfied. If otherwise, court on motion will set same aside. On this motion, you draw up rule with Mr. Cooper, which must be shewn to Mr. Caley clerk of the judgment, to authorize him to sign judgment.

This may be done on same affidavit before a judge, in vacation, and he will make an order for judgment to be entered up.

Plaintiff, before he signs judgment against defendant, on warrant of attorney, should file common bail for defendant, or it is error. *Hil.* 1 *W. & Mary.*

Court will not permit warrant of attorney of above a year and a day standing to be entered up, if party to whom same was given is dead. *Strange* 718.

A person in custody confessing judgment to the plaintiff, at whose suit he is in custody, must have an attorney of this court or the Common Pleas, on his behalf present when he signs same; and must subscribe his name as a witness and attorney for defendant, or court, on motion, will set same aside. This doctrine is confined to the particular cause on which he is in custody, and not as to a warrant given in any other suit. 2 *Bur. Rep.* 1793.

If warrant of attorney given by a woman while sole, who, before judgment entered up, marries, leave of court must be obtained before same can be entered up. 3 *Bur.* 1471.

A person in execution may give a warrant of attorney to confess a new judgment, without the presence of an attorney. 2 *Strange* 1245.

A person in custody, if another becomes bound for him for that debt, he may give such surety a warrant of attorney, without an attorney being present on his behalf. 1 *Salk.* 402.

No warrant of attorney good that shall be taken by any officer or bailiff from a person in his custody, unless attorney on prisoner's behalf present at giving same, and court will punish officer, and set judgment entered up thereon aside, on motion. *Gilbert's Hist. K. B.*

The principle on which the court ground this Note, doctrine, is, that defendant shall not be subjected to any practices of plaintiff, and that his attorney may see that it is done without *auref* of imprisonment. 2 *R. Raym.* 797.

EXECUTIONS.

The common executions are *capias ad satisfaciendum*, against the party's body; the *feri facias*, against the goods and chattels; and the *elegit*, against all the goods and chattels, and a moiety of the defendant's lands. Executions,

These writs are all ingrossed on a 2 s. piece of stamped parchment. You pay stationer for each 2 s. 2 d. The *ca. sa.* and *fi. sa.* are not signed, therefore no note for office necessary. Pay at the seal office, sealing 7 d. each. The *elegit* is to be signed; pay Mr. Heberden 1 s. 8 d. signing; same sealing, at seal office, 7 d. Make note for office thus:

London, to wit, *Elegit* for A. B. against C. D. Precipe for
to levy l. elegit.

R. R. attorney. }
Aug. 1772. }

Returnable (the re-
turn of writ).

If

Observations.

If plaintiff doth not take out execution upon his judgment in a year and day, or if either of the parties die, he then must revive judgment by *sci. facias*, directed into county where original action brought, before he can take out execution. 8 & 9 W. 3.

Note.

It is a writ to warn defendant that he may shew cause to court, (if he hath any) why plaintiff should not have execution.

But if *fi. fa.* taken out within the year, and *nulla bona* returned thereon by sheriff, and same continued on roll from term to term, till defendant appears, *sci. fa.* unnecessary. *Strange* 100.

If you take out *ca. fa.* and charge the body in execution, you can have no remedy against the goods or lands, except defendant escape or is privileged, or where defendant dies in execution; then plaintiff may have an *elegit* against his lands, or a *fi. fa.* against his goods in the hands of an executor.

Where part is levied upon goods, &c. upon an *elegit*, or *fi. fa.* another *fi. fa. elegit*, or a *ca. fa.* may be sued out for the remainder; but if any of these executions be returned executed, and filed, the party can never have any other execution on that judgment; for there can be but one execution executed with satisfaction on one judgment; and the returning and filing the writ makes it an execution executed.

Ca. Sa.

George the Third, &c. To the sheriffs of London, greeting: We command you, that you take C. D. if he be found in your bailiwick, and safely keep him, so that you may have his body before us at Westminster, on (the return you make writ of) to satisfy A. B. (here insert the debt and costs taxed) for his damages which he hath sustained, as well by occasion of the not performing of certain promises and undertakings lately made to the said A. by him the said C.

As

As also for his costs and charges laid out by him the said *A.* about his suit, in this behalf, whereof the *C.* is convicted, as appears to us upon record: And have you then there this writ. Witness *William Lord Mansfield*, at *Westminster*, the (if in term, the first day of term; if in vacation, the last day of the preceding term) in the 12th year of our reign.

Lee.

Indorse attorney's name, the
day, month, and year, sued
out.

In debt, covenant, trespass, &c. vary the form as directed under the head of *fi. fa.*

George the Third, &c. To the sheriffs of *Fi. Fa. London*, greeting: We command you, that of the goods and chattels of *C. D.* found in your bailiwick, you cause to be made (here insert the debt and costs taxed) which *A. B.* lately in our court before us at *Westminster*, recovered against the said *C.* for his damages which he sustained, as well by occasion of the not performing certain promises and undertakings lately made to the said *A.* by him the said *C.* As also for his costs and charges laid out by him the said *A.* about his suit in this behalf, whereof the said *C.* is convicted, as appears to us upon record; and have you the said monies before us *Westminster*, on (the return you make writ of) to render to the said *A.* for his damages, costs and charges aforesaid: And have you then there this writ. Witness *William Lord Mansfield*, at *Westminster*, (teste according to directions in former writ) in the 12th year of our reign.

Lee.

Indorse as in former writ, and add,
Levy the whole, besides sheriff's
poundage, and costs of levy.

If

The Modern Practice of the

By original.

If proceedings by original, say on *ca. fa.* so that you may have his body before us, on the Morrow of the Holy Trinity, wheresoever we shall then be in England. If on *fi. fa.* and have you the said monies before us, on, &c.

Debt.

Covenant.

Say recovered against him for a debt.

Say for his damages which he sustained, as well by reason of breaking of a certain covenant, (*or covenants, as the case is*) lately made between the said C. and the said A. As also, &c.

Trespasse.

Say, By reason of a certain trespass committed against the said A. by the said C. with force and arms, and against our peace, at London, in your county.

Against an executor.

Say, That you cause to be made (*the debt and costs*) of the goods and chattels which were of (*the testator*) at the time of his death, in the hands and custody of C. executor of the last will and testament of the said (*testator*) in your bailiwick which the said A. lately in our court, (*as before, to the words*, whereof he is convicted, as appears to us of record) if he should have so much in his hands; and if he should not have so much in his hands, then the damages aforesaid, (*if in debt*); if in case, then say, the said expences and costs (*because the whole demand in case consists of damages*) of the proper goods and chattels of the said C. the executor; and have you the money, &c.

Administrator.

Against plaintiff for costs awarded defendant.

The same *mutatis mutandis*.

That you cause to be made (*the debt and costs*) of the goods and chattels of A. in your bailiwick, which were by this court awarded, according to the form of the statute in that case made and provided, to C. for his expences and costs in his defence in a certain action (*as the action is*) at the suit of the said A. and have you the money, &c.

If judgment revived by *sci. fa.*

If you revive judgment by *sci. fa.* then in *ca. fa.* or *fi. fa.* after the words—As it appears

to us of record—Add, And whereupon, in our said court, before us, it was considered, that the said *A.* might have his execution against the said *C.* of the damages aforesaid, (*or debt and damages, as the case is*); and that you have, &c.

You may have a *testatum ca. fa. or fi. fa.* Note, but in both cases, *ca. fa.* and *fi. fa.* must be returned by the sheriff, that defendant is not to be found, or has no goods in his bailiwick before these writs issue, because they are grounded on the deficiency of the first process.

George the Third, &c. To the sheriff of ^{Form of a} *Surry*, greeting: Whereas we lately command- ^{testatum ca.} ed our sheriffs of *London*, that they should take ^{fa.} *C. D.* if he might be found in their bailiwick, and keep him, so that they might have his body before us at *Westminster*, on (*here insert return of ca. fa. first sued out*) to satisfy *A. B.* (*here insert debt and costs recovered*) for his damages which he had sustained, as well by occasion of the not performing of certain promises and undertakings lately made to the said *A.* by him the said *C.* as also for his costs and charges laid out by him the said *A.* about his suit in this behalf, whereof the said *C.* is convicted, as appears to us on record; and our said sheriffs of *London*, at that day, returned to us, that the said *C.* was not to be found in their bailiwick; whereupon, on the behalf of the said *A.* it is sufficiently attested in our court, before us, that the said *C.* doth run about and secretes himself in your county: Therefore we command you, that you take the said *C.* if he may be found in your bailiwick, and keep him safely, so that you may have his body before us at *Westminster*, on (*here insert return of testatum*) to satisfy the said *A.* (*here insert debt and costs, or as action may be*); And have you then there this writ.

Witness

The Modern Practice of the

Witness *William Lord Mansfield, at Westminster, (here insert teste of this writ) in the 12th year of our reign.*

Lee.

Indorse same as directed on ca. fa.

Form of
testatum fi.
fa.

George the Third, &c. To the sheriff of Surry, greeting: Whereas we lately commanded our sheriffs of London, that they should cause to be levied of the goods and chattels of C. D. in their bailiwick, (*here insert debt and costs*) which A. B. lately in our court, before us, at Westminster, recovered against him for his damages which he sustained, as well by occasion of the not performing of certain promises and undertakings lately made to the said A. by him the said C. (*or as the nature of the case may be*) as for his costs and charges laid out by him the said A. about his suit in that behalf, whereof the said C. is convicted, as appears to us of record; and that they should have the said monies before us at Westminster, on (*here insert return of original fi. fa.*) to render to the aforesaid A. for his damages, and also for his costs and charges aforesaid: And our said sheriffs of London, at that day returned to us, that the said C. had not any goods or chattels in their bailiwick, whereof they could cause to be levied the said monies; whereupon, on the behalf of the said A. it is sufficiently attested in our court, before us, that the said C. hath sufficient goods and chattels in your bailiwick, whereof you may cause to be levied the said monies: Therefore we command you, that you cause to be levied (*here insert debt and costs, as the case may be*) of the goods and chattels of the said C. for the damages, costs, and charges aforesaid; and have you the said monies before us at Westminster on (*here insert return of test. fi. fa.*) to render to the said A. for his damages, costs, and charges aforesaid,

aforesaid, in form aforesaid, &c. And have you then there this writ. Witness *William Lord Mansfield*, at *Westminster* (test of testatum) in the 12th year of our reign.

Lee.

Indorse same as directed under common fi. fa.

George the Third, &c. Whereas *A. B.* lately Form of an
in our court, before us, at *Westminster*, by bill, Elegit.
without our writ, and by the judgment of the
same court, hath recovered against *C. D.* (*here
insert debt recovered*) together with forty shillings
for his damages, which he hath sustained, as
well by occasion of the detention of that debt,
as for his costs and charges by him about his
suit in that behalf expended, whereof the said
C. is convicted, as appears to us of record; and
afterwards the said *A.* came into our court, be-
fore us, and hath elected to be delivered to him
all the goods and chattels of the said *C.* except
oxen and beasts of the plough; and also a
moiety of all and singular the lands and tene-
ments of the said *C.* in your bailiwick, to be
delivered to him according to the form of the
statute in that case made and provided, and
until the said debt and damages shall be there-
upon fully levied: We therefore command you,
that all the goods and chattels of the said *C.*
in your bailiwick, except oxen and beasts of
the plough; and also a moiety of all the lands
and tenements of the said *C.* in your bailiwick,
whereof he was possessed, on the day
of (*here insert the day judgment was gi-
ven*); on which day the said judgment was gi-
ven, or ever afterwards, you cause to be deli-
vered, without delay, to the said *A.* by a rea-
sonable price and extent, to hold the same as
his proper goods and chattels; and also to hold
the moiety of the said lands and tenements as
his own proper freehold to him and his assigns,
T according

The Modern Practice of the

according to the form of the said statute, until the debt and damages aforesaid shall be thereof fully levied; and that you make appear to us at *Westminster*, on (here insert the return of *elegit*) under the seal and seals of them by whose oath you shall make the said extent and appraisement, in what manner you have executed this our writ; and that you have then there this writ. Witness *William Lord Mansfield*, at *Westminster*, &c.

Lee.

Indorse same as directed on fi. fa.

Observation.

If any of these writs are not executed before the return, an *alias* or *pluries* may be taken out; or if defendant takes refuge in a liberty, a *non omittas*. For forms thereof, see page 40 & 41, under head *alias*, *pluries*, and *non omittas* bill of *Middlesex*. The *alias* and *pluries* cost nothing signing; sealing 7 d. each.

Practical remarks.

In debt on bond, where judgment goes by default, plaintiff may levy the whole penalty, and defendant must seek his remedy in equity.

Execution taken out against a man's goods in his lifetime, may be executed after his death without *sci. fa.* *Mod. Cas.* 225.

If upon an *elegit*, part of the debt is levied on the goods, and a *nihil* returned as to the lands, plaintiff may sue out a *ca. fa.* and take the body of defendant for the remainder of the debt. *Strange* 226.

Plaintiff on an *elegit*, releasing one acre extended thereon, releases the whole. *Andr.* 226.

Where judgment against two, and one dies before execution, *sci. fa.* must be brought against both the survivor and heir, and tenants of the deceased. *Cartbeu* 107.

Where judgment against two, the death of one, after taken by *ca. fa.* doth not discharge the other. *Crook.* 851.

Court of King's Bench.

207

Any creditor, at whose suit the prisoner stands charged in execution, may retake him upon escape by a new *ca. sa.* 8 & 9 W. 3.

Fi. sa. abates not by death of plaintiff. *Mod. Caf.* 225.

Statute 8th of *Anne* extends only to the immediate landlord, so that a ground landlord is not intitled to a year's rent on execution against an under lessee. 2 *Strange* 787.

Defendant may be taken in execution by a wrong name, if he has omitted pleading a misnomer. Same in case of bond given in a wrong name. *Strange* 1218.

SHERIFF *his Duty, &c.*

Is an officer annually appointed by the King in council, except in *London* and *Middlesex*, where they are chosen on *Midsummer-day* by the livery of *London*.

By the common law, the sheriff is a subordinate officer to the *K. B.* as the constable is to a justice of peace. 2 *Ld. Raym.* 1195.

By stat. 3 *George* 2. The sheriff may appoint an under-sheriff or deputy for executing his office.

Sheriffs must yearly make a deputy in the courts of Chancery, *K. B.* Common Pleas, and Exchequer, of record, before they return any writs, whose duty is to receive all writs and warrants, under forfeiture, for neglect of so doing, 40 l. and treble damages. *Stat.* 23 *Hen. 6.* Rule, *Michaelmas* 1654. *Easter*, 16 *Car.* 2.

All sheriffs, at the expiration of their office, must turn over their prisoners, and all such writs and processes as remain in their custody unexecuted, to the new sheriff, by indenture and

T 2

sche-

Any

schedule; and on neglect thereof, are liable to make satisfaction by damages and costs to the party aggrieved. *Stat. 20 Geo. 2.*

Sheriff shall not be called on to make a return of any writ, &c. unless required so to do within six months after the expiration of his office. Same *Stat.*

All writs executed by a former sheriff, tho' included in the indenture and schedule to the new sheriff, must be returned by, or in the name of the old sheriff; and the return subscribed by the new sheriff.

The old sheriff's power remains till new sheriff is sworn in. 2 *Lill. Abr.* 633.

In what

cases process
begun by old
sheriff, shall
be ended by
him.

If he hath made a return of *cepi corpus & parat' habeo*, and afterwards removed, and new sheriff made, on non-appearance of prisoner, process shall go to old sheriff by *distringas*. *Bull.* 82.

The distinction is,

If sheriff return *cepi corpus*, and have not the body ready, he shall be amerced, and a *distringas* shall issue to the coroner: If old sheriff make same return, and before day of return is removed, and another sworn in, the *distringas*, in that case, shall issue to new sheriff, if it appear on record he has taken the body.

On *feri facias*, goods seized by sheriff in his hands, to the value of the debt, who had paid part of debt, and goods not being sold, nor writ returned, he was discharged, and afterwards sold remainder of goods without any *venditioni exponas*. Court determined such sale good, for *feri facias* gave him authority so to do, without any other writ. *Mod.* 557.

If sheriff sells goods on a *feri facias*, and on a *venditioni exponas*, he returns, that he could not find buyers, tho' his office determines, he may still detain the goods in his hands; and plain-

plaintiff hath no remedy against old sheriff, but to have issues upon him. *Latch* 117.

If money paid to the old sheriff, and he is discharged before the return of writ, the party paying same, shall not be compelled to a second payment. Plaintiff must seek his remedy against former sheriff. *Ander.* 260.

If old sheriff return proclamation on an *exigent*, after discharged from office, the outlawry is void, and party may be discharged. *Dy.* 41.

Court refused to grant attachment against sheriff for contempt, after out of office, on this principle, he was then no officer, and could not be fined, without which they did not use to imprison. *2 Brownl.* 144.

Sheriff out of his office, cannot be fined, but court may send for him to answer misdemeanor committed when in office, and a *disstringas nuper vicecomiti* may issue against him for such misdemeanor. *2 Saund.* 88.

Attachment lays against sheriff for frivolous return of *habeas corpus*, and court will in that case direct an *alias* to issue, under a penalty. *Style Rep.* 422.

Attachment may be obtained against sheriff for refusing to bring monies into court levied on execution, when directed so to do; for sheriff is an officer of the court. *Lit. Abr.* 160.

The same against sheriff for returning *test. feri facias*, that he had taken goods, but that they remained in his hands for want of buyers, whereon writ issued to put them to sale, of which he made no return, nor did he satisfy plaintiff. *J. Raym.* 171.

The office of sheriff may be determined by the King, at his pleasure, tho' he cannot abridge his power during his continuance in office. 4 *Bac. Abr.* 431.

Determination of his office.

The Modern Practice of the

Sheriff being made a baron, or chose a member of parliament, doth not vacate his office. *Cro. Eliz.* 2 pl. 3.

By the common law, patents of sheriffs, like all others, determine by the demise of the King. *Dalt. Sher.* 17. But by 1 *Ann.* their power shall remain in force for six months next after such demise, unless made void by his successor. 4 *Bac. Abr.* 435.

Pending demise, and before patent renewed, if a prisoner escape, an action will lie against sheriff for such escape. 7 *Co.* 30.

If sheriff die before his year is expired, his under-sheriff is to execute the office till another appointed; and he is answerable to the King, and all others, during such interval *Stat.* 3 *Geo.* 2.

Where action lies against sheriff.

If sheriff takes a bribe of any under-sheriff, bailiff, goaler, &c. for his place, he may be indicted, fined, or imprisoned. 2 *Inst.* 566.

The above restriction extends to London and Middlesex, by *Stat.* 5 *Ann.*

If sheriff embezzle an exigent delivered to him. 12 *Mod.* 494.

An action on the case will lie against sheriff for entering a corporation, which had *retorna brewium*. *Roll. Rep.* 119.

If sheriff refuses sufficient bail against *Stat.* 23 *Hen.* 6. an action lies against him for the penalty of 40l. *Roll. Abr.* 537.

An action on the case lies against sheriff for levying money on *feri facias*, and not bring same into court at return of writ.

If sheriff is often seen in a person's custody against whom he hath a writ, and return same *non est inventus*, an action lies against him. *Cro. Jac.* 532.

So if he hath a warrant to attach the goods of another, and can, but does it not, an action lies against him. 3 *Bulst.* 212.

Or

Or if you shew him defendant, and he does not arrest him. *Cro. Eliz.* 873.

On a writ *de coronatore eligend'*. if sheriff refuses to return him coroner, who is chosen by the major part, an action lies against him. 2 *Vent.* 26.

An action will lie against sheriff for not returning good issues upon a *distringas*. Lord C J. *Holt.* 12 *Mod.* 494.

If sheriff refuses a writ, an action will lie against him, because the law hath charged him with that employment for the public good. 12 *Mod.* 485.

Sheriff may be amerced for the default of his under-sheriff, or bailiffs in the Exchequer; but where amerced, shall not be indicted or imprisoned for same. *Latch.* 181. *Brownl.* 36.

If sheriff is amerced by the court, same may be respited, if not estreated into the Exchequer, by motion and consent of party aggrieved. *Lit. Abr.* 83.

On *latitat*, if sheriff return a *cepi corpus*, and party arrested doth not appear, he may be amerced; yet if party appears within one week after return of writ, amerciamment may be taken off. *Lit. Abr.* 83.

If debt levied on *feri facias*, and paid to plaintiff, and writ not returned, levy and sale is good; but sheriff may be amerced for non-return of writ. *Comp. Sher.* 417.

In the following cases, the high-sheriff must execute the office in person, and not by under-sheriff, *viz.*

Writ of *partition*, writ of *redisseisin*, writ of *waste*, *justicies*, and in all cases where the words of writ are, That sheriff shall go in person as in an *accedas ad curiam*, &c. *Freeman* 445.

Note,—

The Modern Practice of the

Note,—If sheriff hath a court by prescription, and used to execute process therein, no action lays against him, because therein he acted as judge.

UNDER-SHERIFF

Is an officer the law takes notice of having been in use from before the conquest. *Brownl. 64.*

His necessary qualifications, power, and duty.

He ought not to have any estate or interest in the office of sheriff. *Latch. 187.*

If an under-sheriff makes deputies, he is liable to an attachment. *Rep. & Cas. Pract. B. R.*

For the sheriff being a ministerial officer, may make a deputy; but the under-sheriff, being a judicial officer, cannot.

All returns made by under-sheriff, must be made in the name of the high-sheriff, who only is answerable for all acts of his servants. *Dalt. Sher. 3. Hob. 13. 12 Mod. 468.*

The high-sheriff need not make an under-sheriff; he may direct his precepts to his bailiffs. *Wood's Inst. 74.*

If an under-sheriff appointed, the necessary consequence is, that he hath power to make bailiffs and precepts without acquainting high-sheriff thereof; this arises from his deputation. *Lord C. J. Holt. 12 Mod. 468.*

No under-sheriff can intermeddle with his office till he hath taken the oaths. *Stat. 27 Eliz.*

He shall not abide in his office above one year. *Stat. 23 Hen. 6.*

Under-sheriff, sheriff's clerk, receiver, nor bailiff, shall be attorney in any of the King's courts,

courts, during the time that he is in office.
Stat. 1 Hen. 5.

On motion for an information against an under-sheriff, acting at the same time as an attorney, contrary to the above statute, a rule to shew cause was granted. *2 Barnard. K. B. 295.*

Assignment of prisoner by an under-sheriff, equally valid as by high-sheriff. *MS. Notes, K. B. 259.*

Under-sheriff, by virtue of his office, is included in the several statutes relating to a sheriff. *10 Mod. Arg. 289.*

High-sheriff cannot depute an under-sheriff with any restriction in the execution of his office. *12 Mod. 467.*

Under-sheriff must have a deputy in all the courts at *Westminster*, to execute their commands. *2 Lil. Abr. 627.*

The office of under-sheriff, seal-keeper, county clerk, shire clerk, goaler, bailiff, or any other office appertaining to the sheriff, shall not be bought or lett to farm, under forfeiture of 500*l.* half to the King, the other to the party suing; action to be brought within two years. *Stat. 3 Geo.*

Action may be brought against under-sheriff in the Exchequer for false imprisonment, or for detaining prisoner after a release made. *Roll. Abr. 539.*

If bailiff on *feri facias* levies a wrong person's goods, high-sheriff may bring action of covenant against his under-sheriff. *2 Keb. Rep. 352.*

Warrant on *feri fac.* directed to under-sheriff; if he levies and conceals writ, action on the case lies against him.

The Modern Practice of the B A I L I F F S

Their qualification,
duty, &c.

Are appointed by the sheriff; they are to execute all writs directed to the sheriff, by virtue of his precept or warrant, within their district. *Barn. Abr.* 232.

Take no oaths to the King, or of office. *Freem.* 419.

Bailiffs are punishable in those courts where writ issues by attachment, for force, violence, and terror; in making an arrest, or breaking open doors where by law they ought not; for treating persons arrested inhumanly, or keeping them in custody till they consent to pay money for their deliverance; for making an arrest without authority, &c. *Lil. Abr.* 266.

Rule for attachment against a bailiff for taking insufficient bail on arrest on bill of *Middlesex*. 8 Mod. 283.

The same for executing process of court contrary to rule, having notice thereof. *Lil. Abr.* 159.

Bailiff arresting a person, shall not carry him to a public house, to his own house, or to the house of any tenant or relation, without his consent, nor charge him for victuals or liquor, but what he calls for, nor take for the arrest a greater sum than is by law allowed, or for indulgence, till bailed or settled, nor for keeping the person arrested out of goal, nor shall carry him to goal within twenty-four hours from the arrest, unless the person arrested refuse to go to any house of safety within three miles of the place arrested, and within the jurisdiction of the sheriff, and then officer may carry him to goal. *Stat. 32 Geo. 2.*

Copies of these causes to be delivered to bailiffs by under-sheriff, and shewn by them to prisoners

prisoners as soon as they come into custody.
Same stat.

The sheriff not bound to execute attachments in person, it may be done by his bailiff. Lord Raym. 21.

Bailiff not prejudiced by non or mis-return of sheriff, so he executes his part of duty. Leon. 144.

On escape from bailiff, action on the case should be brought against sheriff. Vin. Abr. 573.

No bailiff of any court whatever, or serjeant at mace acting as such, shall be bail in any action in this court. Rule, Mich. 6. Geo. 2.

Action lies against bailiff for refusing to convey his prisoner to under-sheriff in order to put in bail, but not for his refusal to take bail. 2 Mod. 32.

Arrest.

A proper arrest held to be, that bailiff must acquaint the party at whose suit he arrests him, and shew the warrant, if required so to do. Cro. Jac. 486.

Sheriff cannot dispute the authority of the court, he must execute writ though erroneous. Vent. 273.

If after arrest person flies, or draws weapons, bailiff may justify beating him, but not before arrest. Dalr. 111.

Bailiff sending another person with his warrant, not named therein, to make an arrest, and the person executes same, such arrest illegal. Lord C. J. Holt. 12 Mod. 73.

Writ executed on the Lord's day illegal, and person executing same, must answer in damages, as if he had no warrant. Stat. 29 Car. 2. 12 Mod. 607. And if the party arrested is de-

The Modern Practice of the

detained till next day, so as to fix him for the first arrest, he hath his action of false imprisonment, and for the detainer, may on motion obtain attachment against officer. 6 *Mod.* 96.

But a person on an escape warrant may be taken on a *Sunday*. Stat. 5 Ann.

An arrest may be in the night as well as day. 5 *Co.* 92.

The law allows an arrest to be made on the day writ is returnable, so it is done before the rising of the court out of which it issues; but not after. 6 *Mod.* 130.

No arrest can be made in the King's palace where he resides, or in any other of his palaces, without an order from the Board of Green Cloth. Lord *Raym.* 978.

The verge of the court comprehends *Whitehall* and the *Park*, the soil and ancient palace at *Westminster*. It extends to all the streets from *Charing-Cross* to the *Sanctuary Gate* at *Westminster*, and the houses on both sides of the streets, from the *Cross* to *Westminster Hall*, between the *Thames* on the East, and the *Park* wall on the West. Stat. 28 *Hen.* 8.

The jurisdiction of the *Marshalsea* court is not to extend above twelve miles from the King's actual residence. Stat. 13 *Rich.* 2.

Arrests ought not to be of persons going to, or coming from church in the church-yard, nor in time of divine service in church, unless at the King's suit. 2 *Bulst.* 72.

Persons attending the courts at *Westminster* on any business relating thereto, or on judge or officer of the court, are privileged from arrests both going and coming, and during such attendance. 2 *Lil. Abr.* 115. 2 *Mod.* 181.

Court will not countenance arrests in the *Temple* in term time. 12 *Mod.* 155.

The liberty of the rolls is no privileged place, but as a court of justice is held there, the party is protected in going and returning on business.

Freem. 47.

The privilege of the cinque ports extends only to its inhabitants, and where the cause arises within their jurisdiction. *Godb.* 102.

The privilege of the universities is not allowed against the privilege of the courts at *Westminster*. *Hardw.* 188.

White Friars, Savoy, Salisbury Court, Ram Alley, Mitre Court, Fuller's Rents, Baldwin's Gardens, Montague Close, the Minorities, Mint Clink, or Deadman's Place, the Hamlet of Wapping, or others within the bills of mortality, have now no privilege. *Stat.* 11 *Geo.* 2.

Officer, at his peril, is to take notice that he arrests the proper person. *Hard.* 323.

Where there are two sheriffs, the act of one is the act of both. *Salk.* 152.

Sheriff may arrest one of the King's servants, but if he shews his privilege, officer must discharge him, or he is punishable. *Keb. Rep.* 842.

Ambassador's servants, if privileged, must have their names in the sheriff's office; they need not lie in the house of their masters, to constitute them servants, but they must prove, before they can be discharged from an arrest, a real and *bona fide* service. *Stat.* 7 *Ann.* 3 *Bur.* 1481.

If an officer arrest a person before he hath a warrant, though he afterwards procure one, such first arrest is illegal. *Dalt. Sher.* 111.

An arrest without shewing warrant till demanded, is legal. *Cro. Jac.* 486.

An action on the case lies against any person disturbing an officer in the execution of his duty, and may be brought either by officer or plaintiff; but it will not lie on an execution

U

where

where defendant himself opposes levy in his own house. 5 Co. 91.

Bail on scire facias. If bail are freeholders of the same county, sheriff must give them notice in time; if strangers, it is not necessary, he may return two *nibils* without any warning. *Comp. Sher.* 111.

Bail-bond. Bail-bond may be given to bailiff or sheriff only, but must be made to the sheriff himself by the name of his office, and shall be only for appearance at the return of writ. 23 Hen. 6. *Mod.* 636.

Any error in bond, as to time of appearance, renders same void; and obligation taken by sheriff after return of writ, is void by the *Stat. Raym* 349.

Sheriff must obey process out of the Duchy court. *Cro. Eliz.* 646.

As sufficiency of bail is not traversable, tho' statute is in the plural number, one pledge is sufficient, and sheriff is judge of the sufficiency. *Fortes. Rep.* 369. *Mod.* 118.

Bail-bond void, if against statute in any point. *Cro. Jac.* 286.

Sheriff may take bail after writ issues, and before it comes into his office, if defendant voluntarily offers same. *Keb.* 554.

Though *superseas* issues to action before the day of appearance, yet defendant must appear to discharge bond.

Sheriff, for a false return to writ, is amerciable by the court, but no action lies against him by the plaintiff. If he refuses to take reasonable bail, an action on the case lies against him, but if he absolutely refuses bail, an action of false imprisonment may be brought against him by the party. *Mod.* 244. *Sid.* 23.

If sheriff dies before assignment of bail-bond, plaintiff must, notwithstanding, sue in his name, as his executor cannot assign bond. 10 *Mod.* 288.

Sheriff

Sheriff compellable to assign bail-bond, and must assign same after his office expires. *Stat. 4 Ann. Fortes. 364.*

Sheriff may take bond for double the sum sworn to, and indorsed on writ. *Barn. K. B. 326.*

There must be two witnesses to assignment of bail-bond. *Fortes. 371.*

Sheriff may take bail on an attachment *pro pace*, but cannot take bail on an attachment for a *contempt*. *Strange 479. Lord Raym. 723.*

Return may be made on the essoign day, but good, if made the *quarto die post*. 2 *Bull.* Returning writs.

On *fieri facias*, where the whole money not levied, first writ must be returned by sheriff, before a second can issue. *Salk. 318.*

All returns made by under-sheriff, must be made in the name of the high-sheriff; they must be true, and not contrary to any former return, and made according to ancient course and precedents. 3 *Bull.* 78. *Cro. Jac. 323.*

Sheriff's return cannot be falsified by affidavit, nor is his return of a *rescue* traversable. *Com 255, 295.*

Under-sheriff compellable to return writ. 12 *Mod. 454.*

Where two sheriffs, writ must be returned in both their names. *Bro. Abr. 22.*

Return of *rescue* must shew the year and day on which made. *Fitz. Abr. 45.*

Scire facias de bonis propriis, can only be awarded on the return of a *devastavit* by sheriff. *Cro. Eliz 530.*

Devastavit may be returned on the first *fieri fac.* at peril of sheriff. *Salk. 310.*

In returns of writs, matters of form are amendable, but not matters of fact. 2 *Bull.* 259.

The return thereof must be made by sheriff, *Habeas cor.* ingrossed on parchment annexed to writ, if *pus.* same be good to common intent, sufficient.

The Modern Practice of the

Habeas at the suit of the King, sheriff must return at his peril. *Keb. Rep.* 272.

If to remove a prisoner, sheriff must return writ, and court will allow his charges, or remand prisoner. The officer has a remedy by action for his charges in bringing up prisoner. *2 Strange* 814.

Inquiry.

If sheriff returns inquisition different from the verdict given by jury, court will set same aside. *2 Barn. K. B.* 214.

If sheriff on executing inquiry, refuses to swear and examine any of the witnesses offered on either side, and yet doth return writ executed, court will grant a new writ to the party grieved.

Inquiry directed to sheriff, cannot be executed by bailiff of the liberty. *Hob.* 83.

Inquiry may be executed before a deputy, so he hath a deputation under the seal of the sheriff's office. *2 Barnard.* 188.

Execution.

Parties cannot except against a juror upon executing a writ of inquiry. *Inst. Cler.* 558.

Sheriff cannot break open a house, open a window, or latch of a door, to take the person, or levy the goods on a writ of execution, except at the suit of the King, or on a *cap. ut legatum*, writ of possession, or for an escape, and even then a demand and refusal must precede such step. *Cro. Eliz.* 908. *Foster* 319. *Bac. Abr.* 454.

But the house of another person will not protect a debtor or his goods; sheriff after request made to open same, and refusal, may break it open. *19 Vin. Abr.* 432. *4 Bac. Abr.* 455.

A barn not adjoining to the dwelling-house may be broke open without request. *Vin. Abr.* 432.

Though sheriff cannot break open a house on *ea. fa. fieri fac.* &c. yet if door is open, and he enters, he may justify breaking open any apartments

apartments therein; and for neglect of executing his warrant, an action on the case lies against him by the plaintiff in the suit. 4 *Bac. Abr.* 456.

Goods pawned shall not be taken in execution while under pledge. *Kitch.* 226.

By statute of frauds and perjuries, no writ of execution affects goods, but from the time of its delivery to the sheriff; and if defendant dies after the *teste*, *feri facias* may be executed on the goods in the hands of the executor. 2 *Lord Raym.* 808.

Payment to the party, on execution, will not discharge sheriff's power by the writ, unless acquittance pleaded as an estoppel thereto, the direction of writ being to bring the money into court; nor is sheriff fairly discharged till he hath so done. 12 *Mod.* 230.

On *feri fac.* where sheriff seizes goods, and makes no return, plaintiff cannot issue two *feri fac.* he must follow first execution; as the property of the goods are altered by such levy, it is proper for him to get return to writ; a new execution would be erroneous, because defendant is not to be doubly charged by judgment. The judgment from that time is no lien on defendant for what has been levied; and if second *feri fac.* taken out by plaintiff, defendant may bring his action against him for so doing. *Godb.* 147, 276.

Whenever sheriff returns seizure of goods, or a rescue, a *scire fac.* lies against him. If he returns a *cap.* to part, a *scire fac.* must be brought for the part, and a *feri fac.* for the residue. If sheriff levies money on a *feri fac.* though he makes no return to writ, action of debt, accompt, or *assumpsit*, lies against him and his executors, because it is a debt in him by levying the money, and defendant by such levy,

The Modern Practice of the

can on *seire fac.* brought to have execution, plead such levy in bar, or on second *seire fac.* be relieved by an *audita querela.* *Cro. Jac.* 419. *Cro. Car.* 539. *Roll. Abr.* 598, 921. *Mod.* 819.

The *elegit* lies to seize goods and chattels, as well as land. Lands on an *elegit* may be sold to plaintiff for the price set on them by jury; if defendant tenders money to sheriff before delivery, or to court before writ delivered to sheriff, such goods are saved; if afterwards, he is intitled to his *audita querela*; but if no tender made of the money by defendant, the property of the goods are altered by delivery of the sheriff, and plaintiff may dispose of them under the judgment. *Moor* 873.

On *seire fac.* sheriff cannot deliver defendant's goods to plaintiff in satisfaction of his debt, but must return execution into court. *Cro. Eliz.* 504.

If defendant tenders debt, it is wrong for sheriff to sell goods. *Keble. Rep.* 655.

In ejectment, if sheriff delivers more land than mentioned in writ of possession, this does not make writ erroneous, but action on the case lies against sheriff for so doing. *Comp. Sher.* 263.

If he does not execute in the right places, trespass lies against him. *Yelw* 228.

If recoverer is put in complete possession by *habere fac. possess.* and same returned, and defendant ousts him again, he hath no remedy but by new action. *2 Brownl.* 216.

Possession is given by sheriff thus; Land by a twig, clod, &c. House by the key, &c. Rent by corn or grass growing on the land. *6 Ca.* 52.

On an *elegit*, sheriff must return and set out the moiety to be extended distinctly, unless where tenants in common, and then he must return the special matter. *Brownl.* 38.

The

The moiety must be delivered by metes and bounds. *Hut.* 19.

If sheriff deliver more than a moiety, execution is void. *2 Salk.* 563.

On *elegit*, if error be brought, and judgment reversed, the goods in *specie* shall be restored, and not the value; on a *feri fac.* the value: The difference being, that on *feri fa.* the sheriff must sell to any buyer, but on *elegit*, he is only to deliver it to plaintiff. *Cro. Eliz.* 278, 584.

Elegit will not lie against glebe belonging to the parsonage or vicarage, nor to the churchyard, for these are each *solum Deo consecratum*. *Jenkins* 207.

No action lies against sheriff for a rescue on Rescuer mesne process in bringing defendant to goal, but otherwise if he breaks goal. *2 Bulst.* 198.

Action of debt lies against sheriff upon a *cap.* returned, *quod cepit corpus*, and prisoner rescued. *2 Rol Rep.* 58.

No rescue on a *feri fac.* for goods, the party must bring an action on the case. *Cro. Car.* 315.

Rescuers punishable by fine and attachment. *2 Keb. Rep.* 340.

When you move for attachment against rescuers, *rescue* must be returned on writ, which is the ground for motion, and not affidavit. *2 Salk.* 586.

Sheriff suffering prisoner in execution voluntarily to escape, plaintiff may have action of debt against him, or action on the case; but if not voluntarily, he may make fresh pursuit, though in another county, after him; and if taken, he shall be deemed still in execution. *3 Co.* 52.

It is no escape, if prisoner retaken before action for escape brought. *Earn. K. B.* 354.

A man

The Modern Practice of the

A man under execution, going at large in or out of the county, is deemed an escape, for he ought to be kept *arcta custodia*. Hob. 273.

False imprisonment.

An arrest after writ returnable.

An illegal warrant and arrest thereon.

If bailiff asks a person if his name is *A. B.* and he says Yes, yet if it is not *A. B.* false imprisonment lies against sheriff. *Mod.* 457.

Action of false imprisonment will not lie against sheriff on arrest, on an erroneous judgment; execution is good till judgment reversed by error. 3 *Mod.* 325.

Sheriff's fees.

Sheriffs formerly being officers of justice, would take no fees or reward for doing their duty, but what they received from the King, and by statute 9 *Eliz.* 21. & *Henry* 7, &c, their fees were limited.

Sheriff is intitled for serving extent or execution on the body, land, or goods, to only 12d. for every 20s. levied, where sum doth not exceed 100l.; and 6d. for every 20s. above, under forfeiture to the party aggrieved of treble damages, and 40l. penalty; half to the King, and the other half to the party suing for same. *Stat.* 29 *Eliz.*

This statute doth not extend to any fees for executions in cities or towns corporate, unless judgment given within their franchise. *Cro. Car.* 287.

However, sheriff of cities and towns corporate, now charge, and are allowed the same fees, paying their bailiffs out of their poundage-money. *Lil. Abr.* 598.

The sheriff, by an equitable construction of statute 23. *Hen.* 6. is intitled to take 4d. for every warrant issued on a writ. *Winch.* 21.

Extent out of the Exchequer at the King's suit, if sheriff dies before sale made, and a
condition

conditioni exponas issues to his successor; the Barons of the Exchequer, or any one of them, are to settle how the poundage is to be divided between the preceding and succeeding sheriff.
Stat. 3 Geo.

Fees to be paid by party who employs officer.
Keb. Rep. 623.

No sheriff, under-sheriff, bailiff, or others employed in levying any debt due to the crown, by process from the Exchequer, shall take any fee under pretence of such levy, except 4 d. for an acquittance, which such officer is to give to the person on whom such debt, &c. is levied; and the bailiff receiving such debt, shall account to sheriff. Sheriff levying such debt, and not accounting to the crown, shall forfeit treble damages, and double the sum to the party aggrieved, to be recovered in a summary way in his Majesty's Exchequer; and if he demands any money of a person from whom any debt is payable to the crown, under pretence of executing process, or for fees, or for forbearance, every such offender shall be adjudged guilty of extortion, and being convicted, shall forfeit treble damages and costs to the party aggrieved, and double the sum extorted to be brought in his Majesty's Exchequer, in a summary way, provided same is prosecuted within two years after offence committed. *Stat. 3 Geo.*

This act does not deprive sheriff of his poundage, &c. or any reward that may be given him by warrant from treasury, Chancellor of the Exchequer, or Barons, for any extraordinary service to the crown. *Ibid.*

Sheriff's fees for levies at the suit of the crown settled by *Stat. 32 Geo. 2.*

There are no fees due to sheriff on executing an *habere facias possessionem* by the statute 29 *Eliz.* as it does not extend to real executions, but only to personal ones; but sheriff is intitled for

The Modern Practice of the

for executing this writ to 12d. for every 20s. of the yearly value of any lands, where the whole does not exceed 100l. and 6d. for every 20s. above that value. By stat. 3 Geo. 8 Geo.

Sheriff is intitled to his fee on *ca. fa.* for what is due to plaintiff. Stat. 3 Geo.

But on *elegit* and *feri facias*, for the sum levied, and no more. Stat. 3 Geo.

Goaler's
fees.

Fees for lodging, diet, &c. of a person in goal, to be settled by justices at quarter-sessions. 32 Geo. 2.

Goaler's fees to be settled by Chief Justice of the court and Mayor; two or three Aldermen, without the Mayor, in *London*; and the Lord Chief Justice, or Lord Chief Baron, with three Justices, in *Middlesex* or *Surry*, &c. *Ibid.*

If goalers take any greater fees than allowed, to forfeit 50l. and treble costs. *Ibid.*

Warden of the *Fleet*, and warden of the palace at *Westminster*, may take bond of prisoner for diet and fees of office due. *Healy* 176.

Sheriff may take a single bill for his fees, but not with a penalty. 10 Mod. 86.

Sheriff may bring action for his fees. Comb. 220.

Action of debt lies upon statute 29 Elix. for sheriff's fees of execution. Roll. Rep. 404.

Giving money to bailiff to arrest a man, is against law. Roll. Rep. 313.

No fee due to sheriff for executing a *cap. ultigatum*, or for warrant, or return thereof. Lit. Rep. 65. Brown. 283.

Extortion in
bailiffs, how
punishable.

Bailiff taking fee to spare a person from appearing at assizes, sessions, &c. is guilty of extortion. Compl. Sher. 483.

Bailiff taking money to forbear arrest, &c. is extortion, and shall forfeit 10l. for every offence. 23 Hen. 6.

Punishment

Punishment of bailiff for extortion is by indictment, information, imprisonment, or commitment

ENTRIES ON ROLL.

AS YET of *(the term issue is of)* WITNESS, *Form of entering proceedings on roll, on verdict.*
WILLIAM LORD MANSFIELD.

LONDON, to wit, } *A. B.* puts in his place *R. R.* his attorney, against *C. D.* in a plea of trespass on the case, *(or as the action may be. If any description of plaintiff or defendant in declaration, it must be inserted).* *Plaintiff's warrant of attorney.*

LONDON, to wit, *C. D.* puts in his place *R. C.* his attorney, at the suit of the said *A. B.* of the plea aforesaid. *Defendant's warrant of attorney.*

LONDON, to wit, } BE IT REMEMBERED, *Issue.*
(or where venue laid) } *BERED, (here insert issue, and plea with or without imparlance, verbatim, to the end of plaintiff's similiter and award of venire; if there be other continuances to other terms, begin each again thus; At which day, &c. and so carry same down to time distringas is returned).*

AFTERWARDS the process being continued *Distringas*, between the parties aforesaid, of the plea aforesaid, by the jury aforesaid, being respited between them before our Lord the King at *Westminster*, until *(here insert return of distringas)* then next following, unless the King's right trusty *William Lord Mansfield*, his Majesty's Chief Justice, assigned to hold pleas before the King himself, shall first come on *(here insert day of trial)* at the *Guildhall* of the city of *London*, *(if in Middlesex, at Westminster Hall in the county*
2

The Modern Practice of the

county of Middlesex; or if at the assizes, unless the Justices of our Lord the King, assigned to hold the assizes in the county of *aforsaid*, shall first come on. Here insert day of assizes, and place *where assizes held*) according to the form of the statute in such case made and provided for default of the jurors, because none of them did appear, at which day before the Lord the King at Westminster, the *aforsaid A. B.* comes by the said R. R. his attorney *aforsaid*, and the said Lord Chief Justice (*if in London or Middlesex; if at the assizes, the Justices of assize, naming them*) before whom the said issue was tried, sent hither his (*or their*) record had in these words, to wit,

Postea. AFTERWARDS (*here insert postea verbatim, according to the nature of the case*).

Judgment. THEREFORE it is considered, That the said *A. B.* recover against the said *C. D.* his said damages, by the said jury in form *aforsaid* assessed, and also (*here insert the increased costs taxed by master*) for his said costs and charges by the court of our Lord the King, now here adjudged of increase to the said *A. B.* with his assent, which damages in the whole, amount to (*here insert debt and taxed costs*).

Mercy. And the said *C.* in mercy, &c. Lee.

Write in margin, judgment, signed day of 1772.

Taken. Instead of *in mercy*, say, *be taken*, in trespass and ejectment; and in the margin, instead of *mercy*, write *taken*.

ENTRY of Interlocutory Judgment.

On demurrer. As before to end of declaration; then in a new line add demurrer to the end; then in another line add joinder to the end thereof; then continue

nuance by *curia advisare vult*, thus: AND because the court of our said Lord the King now here, is not yet advised about giving judgment of and concerning the premises, a day is given to the said parties to come before our Lord the King at *Westminster*, on next after

to hear judgment of and upon the same premises, for that the court of our said Lord the King now here, is not yet advised thereof: AT which day, before our said Lord the King at *Westminster*, came the said parties by their attornies aforesaid, upon which all and singular the premises being seen, and by the court of our said Lord the King now here, fully understood and considered; and mature deliberation being had thereupon, *it appears* to the court of our said Lord the King now here, that the said declaration and the matter therein contained, are sufficient in law for him the said *A. B.* to maintain his said action against the said *C. D.* wherefore the said *A. B.* ought to recover his damages against the said *C. D.* by occasion of the premises aforesaid: But because it is unknown to the court of our said Lord the King now here, what damages the said *A. B.* hath sustained by occasion of the premises, THEREFORE it is com-

Interlocutory judgment,

manded to the sheriff (*of county where venue laid*) inquiry.

Award of

that by the oath of twelve good and lawful men of his bailiwick, he diligently inquire what damages he the said *A. B.* hath sustained, as well by occasion of the premises, as for his costs and charges by him about his suit in this behalf expended; and that he send the inquisition which, &c. to our Lord the King at *Westminster*, on

next after

Return of writ.

under the seal, &c. and the seals, &c. together with the writ of our said Lord the King, to him thereupon directed, &c. The same day is given to the said *A. B.* at the same place: At which

X

day,

Return of
inquiry by
sheriff.

day, before our Lord the King at *Westminster*, came the said *A. B.* by his attorney aforesaid, and the sheriff, to wit, (*here insert sheriff or sheriff's names, with addition or degree*) sheriff of the county of _____ returned a certain inquisition taken before him at _____ in the county of _____

on the

day of

in the twelfth year of the reign of our Sovereign Lord George the Third, now King, &c. by the oath of twelve good and lawful men of his bailiwick, by which it is found that the said *A. B.* has sustained damages by occasion of the premises, over and above his costs and charges by him about his suit in this behalf expended, to

1. and for those costs and charges to 40 s.:

Judgment
signed
day of Au-
gust, 1772.

THEREFORE it is considered, that the said *A. B.* recover against the said *C. D.* his damages aforesaid, by the said inquisition above found, and also

1. for his said costs and charges by the court of our said Lord the King, now here adjudged of increase, to the said *A. B.* by his assent, which damages in the whole amount to

1. And the said *C. D.* in mercy, &c.

Note.

If judgment be by *cognovit actionem*, after title, warrants, and declaration in a new line, insert *cognovit verbatim* to the end, and then judgment.

Directions
for entering
recognizance
of bail on
roll, when
on *scire fac.*

It is necessary before you sue out *scire facias* against bail, that the declaration in the original action should be entered on roll of the term it was of, with title as in first precedent; then warrants of attorney; then recognizance, thus:

Entry of
recogni-
zance.

AND THEREUPON *E. F.* and *I. G.* (*the bail with their additions, as in bail-piece*) came into

into the court of our Lord the King, before the King himself, at *Westminster*, in their proper persons, and became pledges and manucaptors for the said defendant, and each of them became pledge and manucaptor for the said defendant, that if it should happen that the said defendant should be condemned in the plea aforesaid, then the said manucaptors granted, and each of them did grant, that as well the said debt, as all such damages as should be adjudged to the said plaintiff in that behalf, should be made of their and each of their lands and chattels, and to be levied to the use of the said plaintiff, if it should happen that the said defendant should not pay the said debt and damages to the said plaintiff, or render himself on that occasion to the prison of the marshal of the *Marshalsea* of our Lord the King, before the King himself.

If defendant makes no defence on *scire facias*, Note. you enter same on roll, with their returns, thus :

Our Lord the King sent to the sheriffs of London his writ, chose in these words, to wit, *Entry of scire facias* GEORGE the Third, &c. (*writ verbatim to the* where two *nihilis returned.* end, with return; then second *scire fac. to the end,* with return).

THEREFORE it is considered, that the said Judgment on A. B. have his execution against the said E. F. *scire fac.* and I. G. of the debt and damages aforesaid, (or as the nature of the case is) according to the force, form, and effect of the said recognizance, &c.

If there are two *scire facias* returnable in different terms, the first must be entered on roll of term wherein it is returnable. The award of second is sufficient without setting it forth.

The Modern Practice of the

If bail appear and plead, and you obtain judgment, you enter declaration, plea, &c. on *scire fac.* on roll as in a common case.

Note.

The above precedents will direct the practitioner in entering any judgment on roll, varying the different parts of the pleadings *mutatis mutandis*.

Form of docket.

Entries of R. R. Gent. one, &c. of the term of St. Hilary, in twelfth year of King George the Third.
Witness, William Lord Mansfield.

London, to wit, says nothing in debt for 30 l. on bond between A. B. plaintiff, and C. D. *as dict.* defendant, and for damages and costs. } Roll.

Middlesex, non pros in case, for want of replication, between A. B. plaintiff, and C. D. defendant. } Same roll.

Entry of *scire fac.* in debt, between A. B. plaintiff, and C. D. defendant, as well for in debt, as costs. } Same roll.

Practical remarks.

Issues and judgments must be entered on rolls in a fair strong hand, with a margin of about an inch, and at top of each roll, a space of about nine inch breadth must be left to bind them up; and at bottom, a sufficient space left, that the writing be not rubbed out. *Hil. 1657.*

Warrants of attorney for plaintiff and defendant must be entered on every judgment roll, otherwise roll not to be filed. *Easter 4 Ja. 2.*
Roll

Rolls are to be wrote on both sides, observing the above directions.

Those of *Trinity*, *Michaelmas*, and *Hilary* When to be Terms, before essoign day of every subsequent filed. term, and those of *Easter Term* before first day of *Trinity*, or you must pay post term: For the filing same. *Mich. 5 Ann.*

Numbers for rolls are to be had of Mr. *Tully*, or Mr. *Heberden*; dockets to be wrote on a piece of unstamped paper; rule and docket to be carried to Mr. *Caley*; pay him entering, 3s.; then carry rolls to Mr. *Tully* to file; pay him 4d. each warrant.

HABEAS CORPUS.

All writs of *habeas corpus* directed to any Sheriff or officer of an inferior court, for removing the body of any prisoner in *London* or *Mid-dlesex*, the *Marshalsea*, or any other court within five miles of *London*, may be made returnable immediately. These writs may be taken out in term or vacation, and it is the duty of the sheriff, or other officer, to make his return, and bring up the body as soon as possible, after receipt of the writ so directed to him. Rule, *Mich. 1654.*

All writs of *habeas corpus* directed to any sheriff or officer of an inferior court, at above the distance of five miles from *London*, must be made returnable at a day certain in court. If returnable in *Hilary*, or *Trinity Term*, they must not be made returnable after second return of those terms, in order if bail is required thereon, plaintiff may be enabled to declare of same term, and defendant shall be obliged to plead to issue, as of these terms, so that plaintiff may try his cause the next assizes, if he thinks fit, or in default of pleading, judgment may be

entered against defendant of same term, if rules to plead are given in due time. *Same rule.*

If *habeas* sued out in *Hilary* or *Trinity Term*, or the beginning of the vacations of those terms, writ must be made returnable the first or second return of subsequent terms, *viz.* *Easter* or *Michaelmas*, or plaintiff on summons before a judge may have a *procedendo*. Rule, *Mich.* 1654.

The *habeas corpus ad respondend.* or *ad satisfaciend.* granted to the warden of the *Fleet*, sheriff of a county, or keeper of any inferior prison, returnable at a day certain in court, are as good cause of detainer to such officer, as a *capias ad respondend.* directed to the sheriff.

In this case, the attorney applying for *habeas* must, on defendant's being brought into court to be charged with his client's debt, take care to have the term and number roll indorsed upon such writ of *habeas corpus*.

If defendant is arrested, and in custody of the sheriff to avoid going to the county goal, he may remove himself by *habeas* to King's Bench; but if not in custody by process out of this court, and would chuse to be removed to the King's Bench, he must get some creditor to sue out a bailable action against him, and the writ must be left with the sheriff before *habeas* brought, or he cannot be turned over; and so if defendant is in custody in this court, and would go to the *Fleet*, a *capias* must be sued out in the Common Pleas in same manner to ground the *habeas* to turn him over to the *Fleet*.

If defendant is a prisoner in an inferior court, *habeas* will not discharge him out of such custody, till bail to *habeas* is put in above and justified, therefore it is most prudent to put in bail below, in order to give defendant his liberty, and then bring *habeas*.

No *habeas* can be brought to remove an action in an inferior court, unless for a debt
above

above 5 l. If defendant is charged with several actions in an inferior court, some under 5 l. and some above, *habeas* will remove those above, but those under are not removed by such *habeas*, and the plaintiffs therein may proceed to judgment and execution, as if no such step had been taken. 12 Geo. 1.

TO the warden of our prison of the *Fleet*, *Habeas corpus* greeting, We command you that you have the body of (A. B. *the person to be removed*) who is said to be detained in our prison under your custody, by whatsoever name he is called in the same, together with the day and cause of the taking and detaining the said A. B. before the Right Hon. *William Lord Mansfield*, our Chief Justice, assigned to hold pleas in our court before us, at his chambers in *Serjeant's Inn, Chancery Lane*, immediately after the receipt of this our writ, to do and receive what our said Chief Justice shall then and there consider of him in this behalf, and have you then there this writ, Witness, *William Lord Mansfield*, at *Westminster*, (*the teste of writ*) in the 12th year of our reign.

Lee.

_____ say, To prosecute his certain bill against C. D. in a plea of debt, (*or as the nature of the case is*) as he hath begun it in our court before us, so that we may be able to proceed further in this behalf, as of right we ought, and have there, &c. Ad prosecute.

_____ say, To answer to A. B. of a plea of trespass, (*or as the case is*) so that we may be able to proceed, (*as before, &c.*) Ad respond.

This writ is brought where suit has been commenced in this court, and the defendant been removed Note.

removed by *habeas* to the *Fleet*, in order to bring defendant back into this court to answer to such suit.

Ad satisfaciend.

_____ say, To satisfy *A. B.* for 20*l.* for his damages which he hath sustained as well by occasion of a certain trespass lately committed by the said *C.* to the said *A.* as for his costs and charges, &c. (*as in ca. fa.*) as appears to us of record, so that, &c.

Note.

This writ is brought to charge defendant in execution.

Habeas to sheriff in the country, where defendant is in custody for want of bail, &c.

GEORGE the Third, To the sheriff of (*the county*) of (*where defendant is in custody*) greeting, We command you, that you have the body of *C. D.* (taken by you, and in our prison detained under your custody, as by your return lately sent into our court before us, you have charged yourself) before us at *Westminster*, on (*some return day in term that you would have defendant brought up*) to answer to *A. B.* of a plea of trespass on the case, (*according to the nature of the action*) and also, (*here insert ac etiam, as in writ taken out by you against defendant*) and have, &c.

The same to sheriff of Middlesex.

GEORGE the Third, &c. To the sheriff of *Middlesex*, greeting, We command you, that you have the body of *C. D.* (taken by you and detained in the prison of the Lord the King, under your custody, as by your return lately sent into the court of the Lord the King, before the King himself, you have charged yourself) before the Lord the King at *Westminster*, (*here insert return*) to answer to *A. B.* of a plea, &c. (*as before*).

If sheriff or other officer returns any of these Note.
 writ, *languidus in prisona*, or sick in prison,
 then make out following *habeas* to sheriff, &c.

GEORGE the Third, &c. To the sheriff, ^{Habeas}
 (where defendant in custody) greeting, We com- where person
 mand you, that you have the body of *A. B.* sick in pri-
 taken by you and detained in our prison, under son, as re-
 your custody, (although sick) detained, as by turned by
 your return sent into our court before us, mani- sheriff, &c.
 festly appears to us, (or if in a former sheriff's
 time, the *languidus in prisona* was made, then
 say) as manifestly appears to us by the return of
E. F. late sheriff of the county aforesaid, you
 have before us at *Westminster*, (the return of
habeas) to answer to *C. D.* (as before) and have,
 &c.

The first of these writs is a *habeas corpus cum causa*, and if you want to remove the body and cause from an inferior court, it must be directed to such court, with the proper style and title thereof; as see under head of directions to particular courts, at the end of the book.

The *habeas corpus* returnable immediately, is usually made returnable before the Chief Justice of the court, but bail may be taken before any judge of the same court.

These writs are ingrossed on a 5 s. stamped piece of parchment, and on another piece of parchment unstamped, make *fiat* for judge thus:

Middlesex, to wit, Let there be a *habeas cor-* *Fiat.*
pus for *C. D.* to do and receive, returnable im-
 mediately.

Middlesex, to wit, *Habeas corpus* for *C. D.* to Precipe for
 do and receive. habeas.

R. R. }
 Nov. 1772. }

Returnable immediately.

Carry

The Modern Practice of the

Carry *fiat* and *precipe* to Mr. Heberden, who will sign writ, and keep *fiat* for the judge to sign; pay in term, 6 s. 8 d.; in vacation, 7 s. 8 d.; sealing, 7 d.

Bail cannot be put in to *habeas* till same is returned, and if to remove any matter from an inferior court, the bail and proceedings after removal are *de novo*. Bail to *habeas* are liable to all actions brought from inferior court by return of same, if plaintiffs declare thereon within two terms.

Plaintiff in action removed by *habeas*, must declare against defendant in court where cause removed, before the end of second term after return of *habeas*, and defendant not bound to plead, if delivered afterwards; but if defendant removes cause, and puts in bail to writ, he cannot *non pros* plaintiff for want of declaration.

How to compel a justification on *habeas*.

On cause being removed, plaintiff therein to hasten bail, may take out a rule before any judge of court where cause removed, for a *procedendo*, unless good bail be put in within four days next after service of rule. Pay judge's clerk for rule 2 s.; serve copy immediately on defendant's attorney. If bail not put in within time directed by rule on affidavit of service of rule, and application to judge for that purpose, he will order a writ of *procedendo* to issue. If defendant puts in bail on being served with rule, he gives plaintiff notice of bail in same manner as on bail in a common case, only calling them bail on writ of *habeas* brought in this cause.

Note.

If this rule taken out in vacation, it must be a six-day rule for bail.

On bail being put in, plaintiff may except against bail, and give notice of exception, as in common action, and defendant must justify same in four days, on giving plaintiff notice thereof; but the usual practice is to get a four-day rule from judge for better bail, on return of

of former rule, and serve defendant with same; pay for second rule as before. If this rule is given in vacation, defendant may justify before a judge, in order to comply with same; and if plaintiff does not like such justification, he may, on first day of ensuing term, take out another rule for justification; in which case, defendant may add and justify at same time, and give notice of his intention to plaintiff, as in common case.

On *habeas* for removing cause from *Marshall-Practical re-*
sea, or other inferior court, if bail below be- marks.
come bail above, plaintiff cannot except against them, otherwise where cause comes out of the city courts. 1 *Salk.* 97.

Special bail is required in all causes removed by *habeas* out of inferior courts, unless the defendant be an executor or administrator, or the action for words, or small trespasses, unless directed otherwise by court or judge. Rule, *Hil. 2 Jac. 2.*

On removal from an inferior court, an heir shall not be held to bail. *Lev.* 204.

In *Middlesex*, fees returning *habeas* are as follows. If one action, 9 s. 4 d. If more than one, sheriff takes 2 s. 4 d. each action; and if defendant is in *Newgate*, you pay 2 s. 4 d. for goaler's warrant to deliver defendant to bailiff.

If *habeas* returned in court, the charge is as follows: Judge's clerk for commitment, 4 s.; master, 2 s.; chaplain of King's Bench prison, 2 s.; clerk of papers, 1 s.; crier, 6 d.; tipstaff as before.

You pay allowing *habeas* at *Palace Court*, 5 s.

The *habeas ad testificandum*, may be brought to remove a person in execution to be a witness.

3 *Bur.* 1440.

The *habeas ad satisfaciend' et recipiend'*, may be made returnable immediately notwithstanding

The Modern Practice of the

ing. Rule. Mich. 1654, & 4 & 5 Will. & Mary, 3 Bur. 1876.

Habeas may be brought to remove a person out of private custody, and court will use their discretion as to directions thereon. 3 Bur. 1436.

How to commit a person on return of *habeas*.

When *habeas* returned, bailiff brings defendant to judge's chambers, who will commit him to the prison you intend by *habeas* to turn him over to. Pay bailiff for bringing him to judge's chambers, 10 s.; judge's clerk for commitment, 8 s. 6 d.; tipstaff carrying over defendant, 10 s. 6 d.

All persons committed to custody of the marshal of this court by *habeas*, must remain in actual custody two days next after such commitment, tho' on *habeas* brought from another court to remove him from thence. Rule, 5 Will. & Mary.

All persons brought by *habeas* into court, or before a judge, in order to be committed to custody of marshal, *habeas*, with return thereof, must be left with judge's clerk in order to be filed. A note, with judge's return of writ, must be drawn out on a piece of parchment by attorney prosecuting *habeas*, which must be delivered to marshal on commitment of prisoner. Rule, Trin. 3 Ann.

Form of commitment-piece.

Middlesex, to wit, *A. B.* (as described in proceedings) is committed in execution to the marshal, & c. at the suit of *C. D.* for (the debt and damages) there to remain until, & c.

R. C. } Judgment, Mich. Term, 12 Geo. 3.
attorney.

Roll.

Michaelmas

T
flam
in th
writ.
T
in ca
other
move

Michaelmas Term, 12th George the Third.

*London, to wit, } A. B. is delivered to
where cause removed to. } bail on a writ of ha-
beas corpus.*

Form of
bail-piece on
habeas.

To

C. D. of, &c. yeoman,

*R. R. }
Attorney.*

and

E. F. of, &c. tailor.

*At the suit of the plaintiff
(or plaintiffs, as the case is)
in the plaint.*

This bail-piece is ingrossed on a 2 s. piece of stamped parchment in this form, and bail put in thereon before judge, as on any other bailable writ.

The same doctrine holds on laying *venues* Note. in causes removed, if same are transitory, as in other actions in this court; unless same are removed from the places following; courts of
Y *Canterbury,*

The Modern Practice of the

Canterbury, Southampton, Hull, Litchfield, or Pool, where, though transitory venue must be laid in county wherein such city or town is, as Kent, Southampton, York, Stafford, or Dorset. *Rule, Mich. 1654.*

Time to
plead.

If cause removed out of London or Middlesex, the Marshalsea, or any other inferior court within five miles of London, in Hilary or Trinity Term, bail being put in, and plaintiff declares in London or Middlesex, and declaration delivered defendant six days before the end of those terms, he must plead thereto three days before the essoign day of subsequent term, so that plaintiff may enter issue, if he thinks proper. If not delivered in that time, defendant has an imparlance till next term.

If cause removed out of any court not within five miles of London, and plaintiff does not declare in London or Middlesex, but delivers his declaration before the end of Hilary or Trinity Term, rule to plead being given, defendant must plead within time of rule, so that defendant may try cause at the then next assizes, if he thinks proper, or in default, judgment may be signed against him.

Time to
plead in
Michaelmas
or Easter
Term.

Writ returnable in Michaelmas Term, plaintiff delivers declaration before the octave of St. Martin; in Easter Term, or before one month of Easter, if venue laid in London or Middlesex, defendant must plead an issuable plea of that term; if delivered after these returns, and yet within six days of the end of the said respective terms, wherever venue laid, defendant must plead to enter three days before the essoign of the subsequent term. If not delivered in the time aforesaid, defendant is entitled to an imparlance till the next term.

When bail-
piece may be
filed.

If plaintiff does not except against bail, or rule, defendant to justify same in twenty-eight days after put in, defendant's attorney may file same

same within four days after said twenty-eight days. Bail-piece to be filed in same manner as in a common case.

Habeas corpus to an inferior court to remove body and cause, may be brought any time before cause tried in such inferior court. 16 Practical remarks.

Car. 1.

If upon *babeas cum causa* it be returned, that the prisoner is in execution, he shall be remanded to prison till judgment satisfied. Stat. 2 Hen. 5.

No *babeas* or process to be allowed (except on writs of error and attain) to stay or remove any cause in any court which has jurisdiction to hold plea of such cause, unless same be delivered to the proper officer before issue or demurrer joined; if not joined within six weeks after the arrest or appearance, and if such cause returned by *procedendo*, it cannot afterwards be removed or stayed. 21 Jac. 1.

Sheriff not obliged to bring up the prisoner upon an *babeas*, unless tendered his reasonable charges. Hil. 21. Car. 2. But the court expects that writ should be obeyed; and if prisoner refuses to pay goaler, court will remand him. Strange 308.

An *babeas* lies at the suit of the King to the Cinque Ports, but not at a subject's suit. Hil. 26. Car. 2.

Defendant returned in custody on *babeas*, cannot be discharged until bail perfected.

A plea in abatement on *babeas* must be put in before rule expires.

GEORGE the Third, &c. To Delme Vanbey-
thuyfen, Esq; steward of his Majesty's court of record, held within the manors of Stepney and Hackney, in the county of Middlesex, the hamlets and liberties of the same, and also to the prothonotary of the same court, Greeting,
Y 2 BEING

Form of a certiorari to remove a cause from Whitechapel court.

The Modern Practice of the

BEING WILLING, for certain reasons, to be certified on a certain plaint in our court before you, against *A. B.* at the suit of *C. D.* in a plea of trespass on the case, (or according to nature of the action) we command you, that the plaint aforesaid, as fully and entirely with all things touching it, as it remains before you, by whatever names the said *A. B.* and *C. D.* may be called in the same to us, without delay, where-soever we shall then be in *England*, you certify and send, together with this writ, that we may farther cause to be done therein, as of right we shall see fit to be done. Witness, *William Lord Mansfield, &c.*

Adams.

This writ must be ingrossed on a 5 s. stamp. It is not signed. Sealing 7 d.

Note.

It is in the nature of an *habeas cum causa*, and is seldom used but when necessary to bring up the record from an inferior court, to correct some proceeding thereon. It must be carried to the secondary of the court to which directed, who returns record and proceedings into the King's Bench.

Form of a
procedendo.

GEORGE the Third, by the grace of God, &c. To the Mayor, Aldermen, and Sheriffs of *London*, Greeting: **ALTHOUGH** we lately by our writ commanded you that you should have the body of *A. B.* detained in our prison, under your custody, as it was said under safe and secure conduct, together with the day and cause of his being taken and detained, by whatsoever name the said *A. B.* might be called in the same, before our right trusty and well beloved *William Lord Mansfield*, our Chief Justice, assigned to hold pleas in our court before us at his chambers, situate in *Serjeant's Inn*, in *Chancery Lane*, immediately after the receipt of that writ, (if *habeas returnable immediately*; if not, say,

say, on Monday next, after the return of habeas) to do and receive all and singular those things which our said Chief Justice should then and there consider of him in that behalf; yet we being now moved with certain causes in our court before us, command you, and every of you, that in all complaints or suits against the said *A. B.* at the suit of *John Doe*, in our court before you, or any of you, levied or affirmed, or before you, or any of you, now depending undetermined, you proceed with what speed you can, in such manner, according to the law and custom of *England*, as you shall see proper, our said writ to you thereupon first directed to the contrary in any thing notwithstanding. Witness, *William Lord Mansfield, at Westminster, &c.*

This writ must be ingrossed on a two shilling stamp piece of parchment; it is not signed; pay sealing 7d.; carry same to secondary of court where directed, who files it, and on this authority they prosecute the cause so returned to judgment.

DIRECTIONS for suing out SCIRE FACIAS to revive judgment, or to fix bail.

If execution not taken out in a year and a day When a scire facias after judgment obtained, where parties are all living, plaintiff may at any time within the year to revive judgment issue execution, (though no caption or levy necessary, made) and continue same on roll, to save expence and when of reviving by *scire facias*, or after revived, to not prevent a further revival.

Scire facias must be brought in county where Note. original action commenced.

Y 3

If

The Modern Practice of the

If plaintiff or defendant (or one of the plaintiffs or defendants, if more than one of either) die, no execution can issue on judgment till same is revived by *scire facias*, because there must be a new judgment to warrant execution. 8 & 9 William 3. *Style's Prac. Reg.* 449.

If any of the parties die after interlocutory, and before final judgment, suit doth not abate by such death, but may be revived by *scire facias*. *Same statute.*

If error brought by defendant, and plaintiff *nonproffes* same, no *scire facias* necessary, though after the year and day; the same on an injunction out of Chancery. *Salk.* 322.

When to be
had without,
and when on
motion.

Any time within seven years, if above seven years, and under ten years, motion at side bar sufficient. If above ten years, there must be an affidavit made by plaintiff that debt is unsatisfied, judgment not vacated, and that defendant is living. *Vide* page 34.

If after judgment revived by *scire facias* on motion, defendant dies before execution issues, there must be a new *scire facias*, but no fresh motion necessary. *Salk.* 598.

As to teste
and return of
scire facias
by bill and
by original.

All *scire facias* (where original suit is by bill) need no more than fifteen days exclusive between teste of first *scire facias* and return of second, and each writ to have eight days between teste and return; If by original, fifteen days exclusive between teste and return of each; second may be tested on return day of first. The first *scire facias* to be delivered to sheriff some time before return, and second to be left with him at least four days before it is returnable.

Note.

All writs of *scire facias* to be entered on roll of term first *scire facias* issues.

If plaintiff does not proceed on *scire facias* in a year and a day after judgment revived, he must take out new *scire facias*.

George

George the Third, &c. To the sheriff of *Middlesex*, greeting: WHEREAS *A. B.* lately in our court before us at *Westminster*, by bill without our writ, and by the judgment of the same court recovered against the said *C. D.* of

Form of scire
facias to re-
vive judg-
ment in case.

1.
for his damages which he sustained as well by occasion of the not performing of certain promises and undertakings lately made to the said *A.* by him the said *C.* as for his costs and charges laid out by him the said *A.* about his suit in that behalf, whereof the said *C.* is convicted, as appears to us of record; and now on behalf of the said *A.* we have been informed, that although judgment be thereupon given, yet execution for the said damages still remains to be made to him; whereupon the said *A.* hath humbly besought us to provide him proper remedy in this behalf: And we being desirous that what is right and just should be done on this occasion, command you, that by good and lawful men of your bailiwick, you cause it to be known to the said *C.* that he be before us at *Westminster*, on

next after

to shew if he has or knows of any thing to say for himself, why the said *A.* ought not to have his execution against him for the damages aforesaid, according to the force, form, and effect of the said recovery, if it shall seem expedient to the said *A.* so to do, and farther to do and receive what our said court before us shall then and there consider of in this behalf; and have you there at the same time, the names of those by whom you shall so cause it to be made known to him, and this writ. Witness, *William Lord Mansfield*, &c.

Lee.

This writ must be ingrossed on a double twelve penny piece of stamped parchment. You make a precipe for office.

Middlesex,

Precipe for
scire fac.

The Modern Practice of the

Middlesex, to wit, *scire facias* to revive judgment for *A. B.* against *C. D.* in case.

R. R. } Returnable (the return.
plaintiff's attorney. }
Nov. 1772.

To revive
judgment.

Carry precipe and writ to Mr. Heberden; pay him signing 1 s. 8 d. sealing at seal office 7 d.

If sheriff on first *scire facias* return same *scire feci*, that is, that he hath given notice, plaintiff must give rule with Mr. Cooper thereon. It is a four day rule, exclusive of the day given; if Sunday happens to intervene, defendant hath all the next day to answer same. Make note for rule thus:

A. B. }
against } Rule on *scire fac.*
C. D. }

R. R.
plaintiff's attorney.

Pay for rule 1 s. 10 d. If defendant intends to appear, the usual practice is for his attorney to give plaintiff's attorney notice in writing, that defendant appears to *scire fac.* This notice must be given, and plea delivered within the time of rule. If this step is taken, plaintiff proceeds to issue or judgment, as in a common action in debt on judgment. On defendant's neglect, plaintiff enters up judgment, and takes out execution against him.

If sheriff returns first *scire facias nihil habet*, meaning that defendant hath nothing in his bailiwick, plaintiff must make out *alias scire facias*, which, on sheriff's returning as before, these two writs, in construction of law, amount to a *scire feci*, when you must give rule as before; and if defendant does nothing thereon within the time limited, you may sign judgment, and take out execution.

Sheriff

Sheriff is not obliged to warn defendant till day of return of first *scire facias*; if returned, *scire feci*; if two, no warning is necessary, or given.

The *alias scire facias* is ingrossed on same stamp as first, and the same paid for signing and sealing. The form of *alias* differs from the first only in the mandatory part, *viz.* We command you, as we have heretofore commanded you, that by good, &c.

If defendant appears and pleads, and same is brought to issue, plaintiff must in his *venire distringas* and *jurata*, after the words in a plea of trespass on the case, (or as original action is) add, Whereupon a *scire facias*, and so forth.

If plaintiff after judgment by default against an executor or administrator, wants to fix their property with the debt of testator due to him, he may do it either by *scire fieri* inquiry, or by action of debt on judgment. If by action of debt, he must in declaration suggest a *devastavit* committed by executor on the goods and effects of his testator. If he proceeds by *scire fieri* inquiry, he can have no costs after first judgment, if defendant does not appear and plead to *scire facias*.

Before you can proceed against bail by action of debt on recognizance, or by *scire facias*, (unless in error or outlawry) you must sue out a *ca. sa.* (see form of *ca. sa. on execution*) against the principal, and get same returned *non est inventus*. The *ca. sa.* must have eight days exclusive between the *teste* and return, and must be left in the sheriff's office four days exclusive before the return thereof. *Salk.* 599, 602.

It need not be filed before *scire facias* issues; it is good practice if done afterwards. 1 *Lev.* 225.

If defendant dies before return of *capias ad satisfaciend.* against him, his bail, pleading same to *scire facias*, may be discharged. *Gilbert K. B.*

George

Form of scire
facias against
bail in case.

George the Third, &c. To the sheriff of
Middlesex greeting, WHEREAS *A. B.* lately
in our court before us at *Westminster*, by bill
without our writ, and by the judgment of the
same court recovered against the said *C. D.*

1. for his damages which he sustained as
well by occasion of the not performing of certain
promises and undertakings lately made by him
the said *C.* to the said *A.* as for his costs and
charges by him about his suit in that behalf
expended, whereof the said *C.* was convicted,
as appears to us of record, and although judg-
ment be thereupon given, yet execution of
the said damages still remains to be made
him: AND WHEREAS *E. F.* and *H. I.* here-
tofore, that is to say, of the term (*here insert
term and year of the King bail was put in*) in our
said court before us at *Westminster*, came per-
sonally, and became pledges and bail, and each
of them by himself became pledge and bail for
the said *C.* that if it should happen the said *C.*
should be condemned in the plea aforesaid, then
they the said bail granted, and each of them
for himself did grant, that as well the said da-
mages and costs as should be adjudged to the
said *A.* in that behalf, should be made of their,
and each of their lands and chattels, and to be
levied to the use of the said *A.* if it should hap-
pen that *C.* should not pay the said damages
and costs to the said *A.* or should not render
himself on that occasion to the prison of the
marshal of our *Marshalsea* before us: NEVER-
THELESS, the said *C.* has not as yet paid the
said *A.* the said damages and costs, nor surren-
dered himself to the prison of the marshal of the
Marshalsea before us, as we have understood
from the information of the said *A.* in our court
before us, whereupon the said *A.* hath humbly
intreated us that he may have a proper remedy
in this case, and we being willing that what is
just should be done on this occasion, command
you,

you, that by good and lawful men of your bailiwick, you make known to the said *E. F.* and *H. I.* that they be before us at *Westminster* on (the return of *scire facias*) to shew if any thing they have or know to say for themselves why the said *A.* ought not to have his execution against them, according to the force, form, and effect of the said recognizance, if it shall seem expedient, and so forth: And further to do and receive all and singular those things which our said court before us shall then and there consider of them in this behalf, and that you have there then the names of those by whom you shall make known the same, and this writ. Witness, *William Lord Mansfield, &c.* *Lee.*

To be ingrossed on same stamp, and signed and sealed as *scire facias* to revive; *alias sci. fa.* the same form as above, only in mandatory part to sheriff, say, *Command you, as heretofore we commanded you, that by good, &c.*

The same steps must be taken on *scire facias* to fix bail, if one or two writs as on *scire facias* to revive, and bail may have the same relief thereon.

On *sci. fac.* against bail, your rule given with *Mr. Cooper* must be thus:

<p><i>A. B.</i> against <i>E. F.</i> and <i>I. G.</i> the bail of <i>C. D.</i></p>	}	<p>Rule on <i>scire fac.</i> <i>R. R.</i> <i>plaintiff's attorney.</i></p>
--	---	---

If by original, these writs are signed by the Practical recorder. Pay signing 3 s. and 6 d. sealing 7 d. marks.

If no *ca. sa.* sued out against principal, and filed, bail may plead same to *scire facias*, and be discharged, but court will not relieve on the *scire facias* by motion.

Ca. sa. may be bad as to principal, and yet sufficient to ground *scire facias* against bail, for bail

bail cannot take notice of error in *ca. sa.* if returned and filed. 2 *Bur. Rep.* 1188.

In strictness of law, recognizance of bail is forfeited on *ca. sa.* returned *non est inventus*, and if principal dies *after* and before *scire facias* issues, they are absolutely fixed.

The court, *ex gratia*, does permit bail to render principal any time before return of first *scire facias*, if returned *scire feci*; or if two, before return of second *nihil, sedente curia*. *Trin.* 2d. *Car.* 1st.

You may sue out *ca. sa.* to charge bail, notwithstanding writ of error brought in original action. *Fitz. G.* 175.

If principal dies before *ca. sa.* returned, and before filed, if time limited for doing same is not out, court will relieve in favour of bail. 1 *Lill. Abr.* 163.

Before you take out *scire facias* against bail, all your proceeding in original action must be entered on roll, and carried in.

On recognizance taken in *K. B.* *scire facias* must be brought in *Middlesex*. *Salk.* 564.

If bail taken in the country, and transmitted, *scire facias* may be sued out in *Middlesex*, or where taken. *Lutw.* 1287.

Bail in error entered into at judge's chambers in *London*, *scire facias* against them must be brought in *London*.

The *alias scire facias* must not issue till first *scire facias* is returned. *Salk.* 599.

The warning or summoning defendant on *scire feci* returned, is done by a precept from sheriff served on defendant; it may be done on return day of *scire facias*.

Scire facias against bail must lie four days in the office before the return; but in error, need not do so. 3 *Bur.* 1723.

No damages can be recovered on a *scire facias*; nor could costs, till 8 & 9 *Will.* 3. 3 *Bur.* 1791.
Hilary

Hilary Term, &c.

Middlesex, to wit, Our Lord the King gave Form of declaration on in charge to the sheriff of *Middlesex*, (as the case is) his writ closed in these words, to wit, (here scire facias, where defendant appears. insert scire facias verbatim. If no appearance to first writ, state sheriff's return, then go on with second, and sheriff's return thereto). And that the said *I. K.* and *L. M.* (the two bail) at that day having been solemnly required came by *R. R.* their attorney, upon which the said *A. B.* prays that execution may be adjudged to him of the damages (as nature of action is) afterwards, according to the form and effect of the said recognizance, &c.

To be ingrossed on treble penny stamped paper, and delivered to attorney concerned for bail; give rule to plead with *Mr. Cooper*, as in common case. Defendant has the same time to plead as in another action.

And the said *I. K.* and *L. M.* on the same day being solemnly called by *R. R.* their attorney, come and say, That the said *A.* ought not to have his execution against them for the damages aforesaid, (or as the nature of the action is) because they say, That the said *A.* after the rendition of the judgment aforesaid, to wit, in *Easter Term*, &c. (the time plaintiff sued out ca. fa. against defendant) obtained and prosecuted out of the said court of the said Lord the King, before the King himself, then being at *Westminster* aforesaid, of and on the judgment aforesaid, a certain writ of the said Lord the King of *scias ad satisfaciend.* against the said *C. D.* (the defendant in original action) directed to the sheriff of (the sheriff of county where ca. fa. sued out)

Z

out)

out) by which said writ, the said Lord the King commanded the then sheriff of *(the county)* that he should take the said *C. D.* if he should be found in his bailiwick, and safely keep him, so that he might have his body before the said Lord the King at *Westminster*, on *(the return of ca. fa.)* to satisfy to the said *A.* the damages afore said, *(or as the nature of the action is)* whereof he was convicted; and that he should have then there the said writ, which said writ of *capias ad. satisfaciend.* the said *A.* afterwards, to wit, on the *(any day after writ sued out, and before executed)* at *(place where delivered)* in the county afore said, delivered to *(the sheriff by name)* being then sheriff of the county afore said, in due form of law to be executed, by virtue of which said writ of *ca. ad. satisfaciend.* the said *(the sheriff by name)* being then as afore said sheriff of the county of *(name of county)* afterwards, and before the return of that writ, to wit, *(the day defendant was taken)* took and arrested the said *C.* at *(place where)* afore said, in the county afore said, and him the said *C.* in his custody, in execution for the damages afore said, then and there had and detained, until the said *C.* afterwards, to wit, on the *(the day defendant paid judgment)* at afore said, in the county afore said, paid and satisfied the said *A.* the damages afore said; and this they are ready to verify; wherefore they pray judgment, if the said *A.* ought to have his execution against them for the damages afore said, &c.

PROCEEDINGS *against* PRISONERS.

Stat. 4 & 5 W. & M. If any defendant be taken in custody at the suit of any person, on any writ issuing out of any of the courts at *Westminster*, and detained in prison for want of sureties for their appearance, the plaintiff, on such writ may, before the end of the next term after such process shall be returnable, declare against such prisoner in the court out of which the writ shall issue; whereupon the said prisoner shall be charged in custody, and may cause a true copy thereof to be delivered to such prisoner, or to the goaler, or keeper of the prison, or goaler in whose custody such prisoner shall be, to which declaration the said prisoner shall appear and plead; and if he doth not appear and plead to same, the plaintiff, in such case, shall have judgment in such manner as if the prisoner had appeared in court, and refused to answer or plead. In all such declarations, it shall be alledged in custody of what sheriff, bailiff, or steward of any franchise, or other person having the execution and return of such writ, such prisoner shall be at the time of such declaration, by virtue of the process of the said court, at the suit of the plaintiff, which allegation shall be as effectual as if such prisoner was in the custody of the marshal of the *Marshalsea*.

On the above statute the court grounded the following rule:

Easter 5 W. & M. It is ordered, Rule, K. B.
That no copy of any declaration be delivered *Easter 5 W.*
to a prisoner in custody, before the day of the *& M.*
return

return of the process upon which the defendant was taken, or charged in custody.

That no rule be given for the defendant in custody to appear and plead to any declaration against him, till an affidavit be filed with the clerk of the rules of the delivery of a copy of such declaration, and the time when, and the person to whom, the same copy was delivered; and that the defendant was arrested by process of this court, returnable before the delivery of such copy; and that the time when such affidavit was filed, be entered upon the said affidavit, by the clerk of the rules, and a copy of such affidavit be produced to the prothonotary before signing of judgment.

That upon every arrest by mesne process out of this court, returnable the first day of *Easter*, or *Michaelmas Term*, if a copy of the declaration be delivered against such defendants before one month of *Easter*, or the Morrow of *All Souls*, and affidavit thereof made and filed, and the defendant doth not appear before the end of ten days after *Easter*, and *Michaelmas Terms* respectively, judgment may be entered against him, if rules have been given; but if he doth appear before the end of ten days after the term, he shall imparle until the next term, unless the action be in *London* or *Middlesex*, and the defendant be in prison within forty miles of *London* or *Westminster*; then, though he doth appear before the expiration of ten days after the end of the term, he shall plead two days before the assign day of the next term; and in default thereof, rules having been given, judgment may be entered against him as aforesaid.

If a copy of the declaration be delivered against such defendant, on or after one month of *Easter* in *Easter Term*, or the Morrow of *All Souls* in *Michaelmas Term*, or in *Hilary* or *Trinity Term*, and thereupon the plaintiff gives rules to appear
and

and answer, then, if the defendant appear two days before the essoign day of the next term, he shall imparle until the said next term; but if he does not appear within that time, judgment may be given against him.

If a writ be returnable in any term, and a copy of the declaration has been delivered before the essoign day of the next term, the plaintiff in such next term may give rules to appear and answer; and if the defendant does not appear and plead, upon the expiration of the rules, judgment shall be given against him.

If the declaration be not filed before the end of the next term, after the writ or process (*by which the prisoner was taken or charged in custody*) is returnable, and affidavit made and filed in manner aforesaid, before the end of twenty days next after such term, the prisoner shall be discharged by common bail, signed by one of the judges of this court.

If any goaler, or keeper of a prison, having received a copy of a declaration against any prisoner in his custody, shall suppress the same, and not deliver it forthwith unto such prisoner, an attachment shall be issued against him.

Where any defendant being a prisoner in custody of the marshal of this court, upon *mesne process*, shall be taken and detained in custody of any sheriff, by virtue of a judge's warrant of this court, for an escape made from the custody of the marshal aforesaid, plaintiff, in such action, must declare against such prisoner before the end of the second term after such taking or detaining, otherwise a *superfedeas* may be made for such defendant. *Trin. 6 Ann.*

Rule, K. B.
Trin. 6 Ann.

If any defendant shall be committed to the custody of the marshal of this court, or charged in custody of the said marshal, or arrested or committed by virtue of the process of this court, to the custody of any sheriff, or other officer
Z 3 whatsoever,

Rule, K. B.
Trin. 2 Geo.

whatsoever, at the suit of any plaintiff, and shall so remain in custody for two terms, and the plaintiff shall not declare against *such* defendant within that time, that then such defendant, after the end of the second term after such imprisonment, shall be discharged out of the prison where he shall be so detained, on filing common bail signed by one of the judges of this court, without giving notice to the plaintiff or his attorney.

And if such plaintiff shall declare against such defendant, a prisoner in custody of the marshal of this court, or any sheriff or other officer as aforesaid remaining, and shall not proceed to trial or judgment within three terms next after such declaration delivered; or if any plaintiff shall obtain judgment in the court here in any action against any defendant a prisoner, and shall not charge the said defendant so in prison remaining, in execution upon the judgment so obtained, within two terms next after such judgment so had and obtained, then such defendant so in prison remaining, shall have leave to file common bail, or to sue out a writ of *superfedeas* out of the court here, according to the course of this court, for his discharge out of custody aforesaid, where he shall be so detained, to be granted by one of the judges of this court, if cause shall not be shewn to the contrary by the plaintiff or his attorney, upon notice to them, or either of them, given by the attorney for the defendant, and oath of the said notice to be made, if the said plaintiff shall not appear before the judge aforesaid, to hinder filing the common bail aforesaid, or making the aforesaid writ of *superfedeas*. *Trin. 2 Geo. 1.*

Rule, K. B. Declaration, however, is not a sufficient
Easter, 15 cause of detaining a prisoner in custody of the
Geo. 2. marshal, unless affidavit be made and filed with
the clerk of the rules, that the plaintiff's cause

of action amounts to ten pounds, or upwards, the sum to be indorsed by the clerk of the rules, upon the declaration before left with the turnkey. *Easter 15 Geo. 2.*

Middlesex, to wit, *A. B.* complains of *C. D.* Form of de- being in the custody of the marshal of the *Mar-* clation a-
shalsea of our Lord the now King, before the gainst a pri-
King himself, for that WHEREAS, &c. (as in B. soner in K.
common declaration, add at the bottom opposite to the pledges, Defendant in custody).

Middlesex, to wit, *A. B.* complains of *C. D.* In custody of being in the custody of the sheriff of *Middlesex*, the sheriff of
by virtue of a precept of our Lord the King, *Middlesex*,
called a bill of *Middlesex*, issued out of the court of our said Lord the King, before the King him- self, at the suit of the said *A.* against the said *C.* for that WHEREAS, &c. (add at the bottom, opposite to the pledges, Defendant in custody of the sheriff of *Middlesex*).

London, to wit, *A. B.* complains of *C. D.* In custody of being in the custody of the sheriffs of *London*, the sheriffs of
by virtue of his Majesty's writ of *latitat*, (alias, London.
or *pluries*, as case is) issuing out of this court against the said *C.* at the suit of the said *A.* for that WHEREAS, &c. (add at bottom, opposite to the pledges, Defendant in custody of the sheriffs of *London*).

BUCKS, to wit, } *A. B.* complains of In custody of
(or where venue laid) } *C. D.* being in cus- any other
tody of the sheriff of *Bucks*, by virtue of his Ma- sheriff.
jesty's writ of *latitat*, (alias, *pluries*, or non
omittas, as case is) issuing out of this court against the said *C.* at the suit of the said *A.* for that WHEREAS, &c. (add at bottom, opposite to the pledges, Defendant in custody of the sheriff of *Bucks*).

No

The Modern Practice of the

No affidavit of delivery of declaration is required, when the prisoner is in custody of the marshal, but affidavit must be made where defendant is in any other custody; and it is necessary to set forth in the affidavit, if declaration delivered to a goaler or turnkey, that he acknowledged that the defendant was a prisoner in the said goal. A copy of the declaration must be annexed to the affidavit, and the declaration on treble penny stamped parchment, ought first to be filed with Mr. *Rymell*, in the King's Bench office, before a copy thereof, on treble penny stamped paper, is delivered to the prisoner.

In *Newgate*, *Ludgate*, or any other county goal, you must, before you declare against prisoner, if not in at your suit, take out process against him to charge him in custody of the sheriff.

If defendant is in custody of the sheriff, make three copies of declaration, as before directed; one on treble penny stamped parchment, to file with Mr. *Rymell*, another on treble penny paper to deliver, and a third on treble penny paper to annex to affidavit of such delivery of declaration, to be filed with clerk of the rules; for no rule to appear and plead can be given, till such affidavit is filed.

If defendant is in custody of the marshal of the K. B. make two copies of declaration, one on treble penny parchment, as before, to file, and the other on treble penny paper, to deliver to turnkey or prisoner, as no affidavit, when in custody of the marshal, is required, but rule to plead given as in a common case.

When you deliver declaration to the turnkey for prisoner, you pay him 1 s. entering action: If in *Newgate*, &c. on filing affidavit with clerk of the rules, he gives rule on back of your declaration, which is necessary to produce on signing judgment, if no appearance and plea. Having given rule to appear and plead, as before

fore directed, you proceed to issue, trial, judgment, and execution, as in a common action, under the restrictions of the above rules of court.

If plaintiff does not declare against prisoner in two terms, according to rule, *Trin. 2 Geo. 1.* charge prisoner not declared against in two terms, you must get certificate from Mr. Rymell, that no bill is filed; pay for certificate 1 s. 4 d.; if more than one, 4 d. each; then get certificate from the clerk of the papers of the King's Bench, if in custody of the marshal; or from the goaler, or keeper, if in the custody of the sheriff or other officer; of the causes where-with he stands charged in such custody; pay clerk of the papers for certificate as before; then take out summons before a judge of the court where cause brought, to shew cause why defendant should not be discharged for want of being declared against in due time. Serve same on plaintiff's attorney, and if he does not attend the first summons, on affidavit made of service of such summons, judge makes an order for prisoner's discharge; on filing common bail, if in custody of the marshal; but if in custody of the sheriff, or other officer, the summons must be for a *superfedeas*; pay Mr. Heberden for signing *superfedeas*, 1 s. 8 d.; sealing, 7 d.; which order or *superfedeas* (as the case may be) with clerk of common bail's certificate thereon, for which you pay him 1 s. and 6 d. if one suit, and 4 d. every other, you carry to sheriff in whose custody prisoner is, which is his authority for discharging prisoner.

The same steps are to be taken to discharge prisoner, if plaintiff does not proceed to trial or judgment in three terms after declaration delivered, altering summons according to the nature of the case; and so if plaintiff does not charge defendant in execution within two terms after judgment obtained.

Where plaintiff does not proceed to trial or judgment within three terms, or to execution within two terms after judgment.

If

Where defendant renders himself in discharge of bail after judgment.

If defendant renders himself in discharge of bail after judgment, plaintiff must charge him in execution within two terms, or defendant may be discharged on common bail, to be obtained in manner aforesaid.

Manner of charging prisoner in execution.

Get rule from Mr. *Cooper*; pay for same 4 s. 6 d.; serve copy thereof on marshal, who will indorse thereon his acknowledgment of defendant's being in his custody; pay marshal for same 10 s. 6 d.; enter a *committitur* in the marshal's book, in Mr. *Caley's* office; pay for entering same 4 d.; file rule with marshal's acknowledgment with Mr. *Heberden*; pay filing 2 s.; bring roll into court, with judgment entered thereon; pay court fees 2 s.; pay tipstaff for bringing up defendant 10 s. 6 d.; pay crier of the court 2 s.; pay secondary 9 s.

If prisoner in custody of the sheriff, a *ca. sa.* must be made out on a 2 s. stamped piece of parchment, and warrant thereon, which must be lodged with the goaler, and then proceed as above directed.

Practical remarks.

Persons in custody on any criminal matter, cannot be charged at the suit of a subject in any action, without leave of the court. *Salk.* 354.

The term in which the writ (*whereon the defendant was arrested*) is returnable, is to be accounted one of the two terms, although the writ is returnable on the last day of the term; and so likewise the term wherein the defendant was committed to the custody of the marshal, is to be accounted one, although not committed till the last day of a vacation; and also the term wherein judgment is obtained, is to be reckoned one of the two terms within which defendant is to be charged in execution. *Pract. Obs. on Rule, Trin. 2 Geo. 1.*

If the defendant supercedes suit for want of proceedings before judgment, yet the plaintiff may after

After judgment obtained, take the defendant in execution; but otherwise, if the defendant supercedes suit for want of charging in execution. *Ibid.*

Where defendant is a prisoner, notice of trial left with the turnkey is sufficient. *Strange* 248.

The present practice in charging persons in custody in execution, is to file a bill as of the preceding term, and deliver or leave with the goaler or turnkey, a copy of the declaration as of the same term, and make an affidavit of such delivery. 2 *Bur.* 1052.

If a *committitur* is not entered on record within two terms, the prisoner is intitled to his discharge. 3 *Bur.* 1841.

Persons not in actual custody of the goaler, but only of the officer in a lock-up-house, are not intitled to their discharge under an insolvent act. 3 *Bur.* 1809.

Prisoners in execution upon *qui tam* actions, are not within the meaning of 32 *Geo. 2.* commonly called the Lord's act, either as to the crown's, or even the informer's moiety. 3 *Bur.* 1322.

PROCEEDINGS *against* PEERS and MEMBERS *of the* House of Commons.

All suits brought against peers and members of parliament, must be by special original.

London, to wit, If *A. B.* shall give you secu-
rity to prosecute his suit, then put by sureties original.
and safe pledges, *C. D.* late of *London*, Esq;
(*the said C. D. Esq; having privilege of parliament*)

The Modern Practice of the

ment) to shew that WHEREAS (as in a common declaration by original, according to the nature of the action, to the damage of the said A. B. 100*l.*) as he saith.

Special original returnable,
(the return) wheresoever, &c.

Precipe to be wrote on copy paper.

Carry *precipe* to Mr. Adams, who makes out original; pay for same as on common original; carry original to sheriff, who will summon defendant to appear at return of original; pay him 2*s.* 4*d.* On return, you search with Mr. Wallis, No. 12, Holborn Court, Gray's Inn, to see if defendant hath cast an *essoign*, which he may do any time before return of original, but not after. If no *essoign* cast by defendant to gain time, plaintiff must enter with Mr. Wallis a *recipiatur*. If defendant casts an *essoign* in time, he has till the first *essoign* of the subsequent term to that in which writ was returnable, to appear. If he does not appear after *essoign* cast, you must adjourn *essoign* to a further day, and then sue out a *distringas* for want of an appearance. This writ you may make out yourself, leaving *precipe* with the curfitor when he signs writ.

Precipe for
distringas.

London, to wit, *Distringas* for A. B. against
C. D. (having privilege of parliament),
(the return) wheresoever, &c.

R. R. attorney.

Form of
distringas.

GEORGE the Third, &c. To the sheriff of
Middlesex, Greeting: WE command you, that
you distrain C. D. Esq; having privilege of
parliament, by all his lands and chattels, in
your bailiwick, so that neither he, nor any per-
son by him, lay hands on them until you shall
have other command from us for it; and that of
the issues of the same you answer to us, so that
he

he be before us on (*the return you chuse to make distringas of*) wheresoever, &c. to answer to *A. B.* in a plea of trespass on the case; for that, to wit, **THAT WHEREAS** &c. (*as in precept for original to the end*) and to hear thereof his judgment for his former defaults; and have you there this writ. Witness, *William Lord Mansfield, at Westminster, &c. Adams.*

This writ must be ingrossed on a double twelve penny piece of stamped parchment, and signed by Mr. *Adams*; pay him same as on original, except King's fine, and 1 s. 4 d. additional charge; sealing 7 d.; carry it to the sheriff's office. If defendant does not appear at the return of *distringas*, you must get sheriff to return same; pay him for return 2 s. 4 d. then sue out an *alias distringas*, which only differs from the first in the *alias* part; pay signing same as original, except King's fine; sealing 7 d.; deliver same to sheriff as before, and at return, get same returned by sheriff; pay him for return 2 s. and 4 d. then sue out *pluries distringas*; pay signing and sealing this writ same as *alias*; when attorney for the plaintiff may move at side bar to enlarge the issues, which court will order to be increased to the amount of debt. It is a common motion, for which you pay counsel 10s. 6 d. There is no occasion to give defendant's attorney notice, nor to make any affidavit of the facts or state of proceedings. Draw up rule with Mr. *Cooper*; pay for same 5 s.; serve copy on sheriff; call on him at return of *pluries*, who will pay you the amount of debt and costs, after deducting for fees 12 s. 6 d. If defendant appears after having cast an *essoign*, or after first *distringas* returned, plaintiff must proceed as on a common *capias* by original; and when he hath obtained judgment, he must sue out *distringas* as before, till he hath recovered debt and costs.

By this statute, plaintiffs have a power to 20 Geo. 3. proceed and prosecute their suits against peers
A a and

and members, notwithstanding the meeting of the parliament, and their persons only are protected from arrests.

An order of court, requiring the appearance of a peer or member of parliament, may be enforced by *distingas*. Same Statute.

The servants of peers and members of parliament, are, by this statute, deprived of any privilege they were intitled to from their respective masters, and may now be arrested and prosecuted as a common person. *Ibid*.

PROCEEDINGS against Attornies Clerks in Chancery, &c.

A T T O R N I E S.

Observations.

An attorney cannot be proceeded against but in term time, *sedente curia*, and it must be by bill filed against him in the court, where such attorney is admitted and inrolled.

A bill against an attorney must be ingrossed on a treble penny skin of parchment, and copy thereof to deliver to him must be wrote on treble penny paper: the bill on parchment must be filed with the clerk of the declarations; and a copy must be delivered to the defendant, with notice to plead in four days, indorsed on the back; if delivered any time in term, or within four days of the last day of such term, he must plead within that time, or judgment may be signed against him.

The same doctrine holds where an attorney is plaintiff, and sues by attachment of privilege; defendant must plead within same time, and must file common bail with Mr. *Walter*. Pay for filing same 1s. 2d. The indorsement on the back is the same as on declaration, only call it bill instead of declaration, when against an attorney.

Form of bill. *Middlesex*, to wit, *A. B.* complains of *C. D.* gent. one of the attornies of the court of our Lord the King,

King, before the King himself, in his own proper person, present here in court; for that, *to wit*, That WHEREAS (*here go on as in common declaration, according to the nature of the case*): Add pledges, and say, The defendant in person.

Middlesex, to wit, *A. B.* one of the attornies When by an of the court of our Lord the King, before the attorney of King himself, in his own proper person present this court a- here in court, complains of *C. D.* gentleman, gainst an at- one of the torney of the attornies of the court of the Lord Common the King of the Bench, present here in court, Bench. in his proper person; for that, *to wit*, That WHEREAS (*as before*).

If against a clerk or filacer of the court having When a- privilege, say, Complains of *C. D.* Gent. one gainst a clerk of the clerks of the court of our Lord the King, or filacer of before the King himself, in his own proper person present here in court; for that, *to wit*, That WHEREAS (*as before*).

These proceedings do not differ in any other Note. particular from the commencement of the suit to judgment, from those against a common person on bill or *latitat*.

If an attorney is sued in an inferior court, by Observation. any person whatsoever, whether attorney or otherwise, he may bring his writ of privilege to be released from same, which inferior court must obey and allow, or judge, on summons, will grant a *superjedeas* to the action, or on motion of court an attachment.

In transitory actions against attornies, venue must be laid in London or *Middlesex*; or defendant, on motion, may change same to London or *Middlesex*.

George the Third, &c. To the sheriff of the Writ of pri- county of *Middlesex*, and to the steward of his vilage. county-court, and to the suitors thereof, and to the commissioners of the court of requests in and for the said county, and to each and every of them, Greeting: WHEREAS as well by

A a 2

reason

The Modern Practice of the

reason of our royal dignity, as by an ancient custom in our court before us, from time immemorial, used and approved of in the same, no attorney who is bound by oath to follow his function for us and our people, ought, nor for all the time aforesaid hath been accustomed to be taken, arrested, imprisoned, or against his will drawn or compelled to answer to any person not being an attorney or officer of some of our courts, before any judges secular, elsewhere or otherwise than by bill or bills to be filed against them in our court, before us, in or upon any pleas or complaints which do not concern us, (*pleas or causes of felony, appeals, and pleas of freehold, only excepted*): NEVERTHELESS, some evil disposed persons, not being attorneys or officers of any of our courts, notwithstanding our dignity, the custom and privilege aforesaid, do, as we have understood, intend to take, arrest, and imprison, or before you have drawn, or do intend, by your servants, to draw into pleas or complaints *A. B.* being one of the attorneys of our court, before us, whose constant attendance is required in our same court, to the detriment and manifest diminution of our dignity, the custom and privilege aforesaid, to the great damage of many of our subjects prosecuting and defending in our said court, and the no small prejudice and grievance of the same *A. B.* which, should it be permitted, would be for the future a very bad example for others: WHEREFORE the said *A. B.* hath implored us to grant him his proper remedy in this behalf, and we being willing that what is just and reasonable shall be done for the said *A. B.* and likewise that the honour, custom, liberty, and privilege of our said court, should be inviolably preserved, do command and firmly enjoin you, and each and every of you, that you, and each of you, do wholly desist from taking, arresting, and imprisoning,

prisoning, or in anywise molesting the said *A. B.* at the suit of any person not being an attorney or officer of some of our courts, (*except as before excepted*), or from proceeding in any plaint before you, any or either of you, against him levied, or to be levied by whomsoever, not being so as aforesaid privileged; and if you, or any of you, have taken the said *A. B.* before the receipt of this writ, against the custom, liberty, and privilege aforesaid, that then you, and each and every of you, immediately discharge him from that arrest, telling the plaintiffs in those pleas and plaints from us, that they file their bills in the pleas and plaints aforesaid, according to the custom of our said court before us, from time immemorial used and approved in the same against the said *A. B.* in our said court, before us, to obtain justice there, if they shall think fit. Witness *William* Lord Mansfield, at *Westminster*, &c. *Lee.*

Indorse date when sued out.

This writ must be ingrossed on a two shilling stamped piece of parchment. It is not signed; pay sealing, 7 d. Then deliver it to the secondary of the court where action brought, whose fee for allowing same is 2 s. 8 d. for *superfedeas* and searching office 1 s. 4 d. If attorney is in custody, the *superfedeas* must be served on the bailiff in whose custody he is.

To all and every the officers of, &c.

If arrested discharge, if not forbear to arrest *Superfedeas*.
A. B. Gent. at the suit of *C. D.* he having this day allowed his writ of privilege, as one of the attorneys of his Majesty's court of King's Bench, at *Westminster*. Dated of

1772.

J. S.

Nota, The writ of privilege may be brought if attorney is chose into any parochial or ward office, that he is exempted from by statute.

A a 3

Clerks

The Modern Practice of the Clerks in Chancery

Must be proceeded against for any debt due from them in the *Petty Bag Office*; and the proper officer there directs and manages the proceedings, to whom you must apply for instructions.

Officers of
the court.

Officers of the court of King's Bench, who have privilege from their respective offices, must be proceeded against for any debt due from them by bill, in the same manner as against an attorney; only say in bill, Complaints of *C. D.* one of the clerks of *William Lee*, Esquire, Chief Clerk of the court of our Lord the King, before the King himself, of a plea, for that, *to wit*, That WHEREAS, &c.

Practical re-
marks.

An attorney cannot be arrested by a common person for any debt or demand of his own contracting; yet he loses his privilege, if he becomes jointly bound with others, though not on note or bond, colourably indorsed or assigned to an attorney. He also loses his privilege in a real action at the suit of the King, or when he sues in *auter droit*, as heir, executor, or administrator, or where money is attached in his hands by a foreign attachment in *London*. 1 *Roll. Abr.* 274. 1 *Saund.* 67. 1 *Salk.* 7. 1 *Vent.* 298. 2 *Keb.* 346.

If plaintiff and defendant are both attorneys of the same court, defendant has privilege, and must be sued by bill. 2 *Strange* 1141. See also *Barnes Cases*, 4^{to} *Edit.* 44.

Attornies struck off the roll, are totally deprived of privilege, and are to be sued as common persons. *Roll's Abr.* 274.

An attorney hath no imparlance allowed to a bill filed against him. 12 *Mod.* 163.

Attornies are considered as within the statutes of extortion. 1 *Mod.* 5.

An attorney of *C. B.* being sued in this court, doth not waive his privilege by filing bail, but may plead fame to that or any other action filed against

against him in the same term by the bye; but if he pleads in *chief* to first action, it is a waiver of privilege in all actions brought against him in same court that term. If he is in custody of the marshal by process, he cannot plead his privilege to any bill filed against him while in such custody; or if brought into this court by attorney thereof, it is an *estoppel* to his privilege in that and all other actions brought against him in same term. So *vice versa* in *C. B.* against an attorney of this court. *Carth. 377.* But if in either, an attorney is sued as a common person, he may bring his writ of privilege in bar of such action.

Attorney cannot waive his privilege where he sues, or is sued in his own right, or in a joint action, which can be severed without prejudice. *1 Salt. 2. 2 Roll's Abr. 274. 1 Vent. 298.*

Attachment of contempt will lie against an attorney for putting to a process the name of an attorney of this court, without his authority for so doing. *Bur. Rep. 20.*

Privilege of an attorney does not hold against the court of conscience in *London 3 Burr 1583.*

If there be a joint cause of action against an attorney and another person, plaintiff must declare against both as in custody. *Comb. 465.*

If attorney sues by original, or on any process except attachment of privilege, he thereby waives his privilege in such suit. *2 Lev. 39.*

For form of attachment of privilege, see under *Head of writs*, page 46.

AUDITA QUERELA.

This writ sets aside the judgment for some Observations on the nature and operation of this writ, injustice in the party who obtained it, which could not be pleaded in bar; for if it could, then it was the party's own laches not to plead it in bar of such demand, which cannot be relieved by this writ, otherwise proceedings would be endless.

endless. It relieves deceit, as where a party is not represented by an attorney by him constituted, and complains of the injustice of the execution, in order to have restitution, and punishes the deceit only by way of consequence, *viz.* Setting aside judgment so obtained.

If the deceit is precedent to the judgment, it will be set aside, if complaint found true, by this writ.

If plaintiff releases to defendant the action for which he was sued after the day in bank, or after judgment obtained, then defendant may bring this writ for relief; for tho' release doth not annul the judgment, as being not a matter of equal notoriety therewith, yet it precludes the execution.

It lies where a party takes out an unjust execution on a lawful judgment, as when he loads one defendant and not the other, when the burthen ought to lie equally on both or all, as the case may be.

It lies as well on matter in fact as on matter in writing, as where *A.* and *B.* come before any magistrate, and *B.* doth acknowledge himself to be bound in 500 l. to *A.* in the name of *C.* and afterwards *C.* is arrested by force of this bond and statute, and taken in execution. In this case *C.* shall have this writ against *A.* and *B.*

It lies for bail after reversal of the judgment against principal; or if debt brought on judgment, after first judgment reversed in error, it may be brought for relief against second judgment

A person taken in execution, and set at liberty, and taken again on same judgment, may have this writ to relieve him. *Gilb. Law of Execut.*

Practical remarks.

This writ must be allowed in open court, by motion. Rule, *Trin. 9 James 1.* Then the secondary indorses the *allocatur* upon it, for which you pay 2 s.

One

One in execution may be bailed by this writ ; but he must procure four sureties. Bail must be given in open court by special motion. Rule, *Trin. 9 James 1.*

If writ is founded upon record, or party in custody, the process thereon is a *scire facias* ; but if on matter of fact, or party not in custody, the process is a *venire* and distress infinite.

Execution may be sued out notwithstanding this writ, till *superfedeas* obtained, which cannot be had till bail put in ; or if grounded on deed, till same is proved in court.

I party seeking redress under this writ is nonsuited, he cannot have *superfedeas*, but may have a new writ.

It carries no costs or damages. *Dyer 194.*

George the Third, &c. To our right trusty and well-beloved William Lord Mansfield, our Chief Justice assigned to hold pleas in our court, before us, Greeting : We have, by the grievous complaint of *A. B.* of, &c. understood, That WHEREAS one *C. D.* of, &c. did on such a day, &c. *(here insert the bond and judgment, with a release, &c. or whatever other matter is intended to be redressed by this writ)*, wherefore the said *A. B.* hath most humbly implored us to grant him a proper remedy in this behalf, and because we will not suffer him the said *C.* to be in anywise injured in this behalf, being willing that what is just should be done, we command you, that the complaint of the said *A. B.* in this behalf being heard, and the parties aforesaid being called before you, and their reasons on both sides being heard, you cause full and speedy justice to be done to the said *A. B.* as of right, and according to the law and custom of our kingdom of England, you shall see proper and just to be done. Witness

Form of writ
of audita
querela.

**The Modern Practice of the
ness Ourself at Westminster,** day of
in the 12th year of our reign.

This writ issues out of Chancery to the Chief Justice or Judges of the court, where proceedings were had : The party applying for same, must make out *precipe* for curfitor, in which he must state the whole proceedings : it is best to have *precipe* drawn by a special pleader. The curfitor gets writ sealed ; pay him 11 s. 2 d. and when he returns it to you, carry writ and bail into court ; move court to have writ allowed ; get allowance indorsed by Mr. *Benton* ; pay allowing 2 s. and put in bail. There must be four bail to this writ.

Form of bail
piece.

Michaelmas Term, 12th George the Third.

Middlesex, to wit, A. B. of, &c. is delivered to bail to prosecute with effect a writ of audita querela brought by him to be discharged of and from a judgment given against him in the court of our Lord the King, before the King himself, at the suit of C. D. for l. debt, and for damages, costs, and charges, to

R R. }
Attorney.

J. K. of, &c.
L. M. of, &c.
O. P. of, &c.
Q. R. of, &c.

To be ingrossed on a 2 s. piece of stamped parchment of this form. Fees paid putting in bail, are the same as in a common case in court, only paying for the two additional bail.

Bail

Bail being put in in court, you move court for *superfedeas*, if party is in execution. The bail cannot render, but must pay the money, if party is convicted, or don't prosecute writ with effect.

You warn adverse party by *sci. fa.* or *venire* Note.
fa. (as the case may require) to shew cause, you must give him notice, if possible; if not to be done, get two *nibils* returned on these writs, and give a rule with Mr. Cooper; pay for same 1 s. 8 d. on which court will proceed to judgment.

GEORGE the Third, &c. To the sheriffs *Scire facias* of London, Greeting: WHEREAS by the on audita grievous complaint of *A. B.* of, &c. (and so on *querela* as in the audita *querela* to) whereupon the same *A. B.* hath most humbly besought us to grant him a proper remedy in this behalf, and because we are unwilling that the said *A.* should be in anywise injured in this behalf, and are willing that what is just should be done, we command you, that by good and lawful men of your bailiwick, you give notice to the said *C. D.* that he be before us on (*here insert return*) where-soever, &c. to shew if he hath or can say any thing for himself, why the said *A.* from the debt and damages aforesaid, against him in form aforesaid recovered, ought not to be quite discharged and out of our prison of the King's Bench, in which he is on that account detained, released, if he shall think fit, and farther to do and receive what our court before us shall consider in this behalf; and have therè the names of those by whom you shall give him notice, and this writ. Witness William Lord Mansfield, at Westminster, (the teste).

Lee.

Indorse on back of writ, attorney's name, day, month, and year, when sued out.

George

Venire facias
in audita
querela.

George the Third, &c. To the sheriffs of London, Greeting: We command you, that you cause to come before us on (*the return*) wherefoever, &c. twelve free and lawful men of the body of your county, each of whom has ten pounds by the year of lands, tenements, or rents, at the least, by whom the truth of the matter may be better known, and who are in nowise of kin either to *A. B.* the plaintiff, or to *C. D.* the defendant, to make a certain jury of the county between the parties aforesaid, of a plea of (*according to the nature of the case*) because as well the said *C. D.* as the said *A. B.* between whom the matter in variance is, have put themselves upon that jury; and have there then the names of the jurors, and this writ. Witness *William Lord Mansfield*, at *Westminster*, &c.

Lee.

Indorse on back, attorney's name, day, month, and year, when sued out.

The judgment of court is, That plaintiff in the former judgment shall have no execution of such judgment.

You then get rolls; enter writ, *sci. fa.* or *venire fa.* (*as the case may be*) thereon, with the returns, and default of party appearing, and judgment of court thereon, and at the bottom of roll a memorandum, that on such a term and roll judgment was vacated. This is to prevent execution; judgment must be marked by proper officer.

If party appears and pleads, you make up record; give briefs to counsel, and try same as in a common case.

Plaintiff in *audita querela*, if nonsuited, may have a new writ of *audita querela*, but cannot have a *supersedeas* to stay execution.

W A G E R

WAGER OF LAW.

This remedy lies for defendant where action of debt is brought against him on simple contract between the parties, and no deed or writing to support same.

It may be had in accompt, if receipt was by hands of defendant, but not by hands of a third person. In bailment, tho' by hands of third person, because not traversable, and detainer and re-delivery may be secret.

In debt on arbitration, if submission parol, because submission may be secret; and so in all cases where no deed to authenticate the matter, and the transaction hath been in secret.

After plaintiff hath declared, defendant must plead thereto; if in debt, the proper plea is *nihil debet per legem*, which must be varied according to the nature of action brought.

In order to wager his law, defendant, after pleading, must get rolls, and enter declaration, plea, and judgment thereon, and get rule from Mr. Benton, appointing a day for plaintiff to appear in court, which must be served on plaintiff's attorney. Pay nothing for same; entering with Mr. Cooper, 1 s. 10 d. On day of appearing, defendant must come into court, and bring with him eleven compurgators, who are to swear that they believe defendant swears the truth. Record being brought into court, master takes same, and defendant standing in court, master asks him whether he will wage his law. If he answers in the affirmative, court usually admonish him; but if he persists so to do, master addresses him in manner following:

Question. A. B. the defendant, you owe C. D. the plaintiff, 40 l. Why don't you pay him?

Answer. I owe him nothing.

B b

2 Did

Q. Did you not buy, &c. (according to what action is brought for).

A. No.

Q. Will you make oath thereof?

A. I will.

Then master bids crier call plaintiff three times, and if he does not appear, he becomes nonsuited, and defendant is discharged without oath. If plaintiff appears, defendant lays his right hand upon the book, and says after master thus: Hear ye justices, that I owe not C. D. the plaintiff, (*the sum for which action brought*), nor any penny thereof, in manner and form as he hath declared against me. So help me God, and by the contents of this book. And then compurgators standing behind defendant, and laying their right hands on book, swear that they believe what defendant hath sworn to be true.

Practical remarks.

If plaintiff appears, and defendant performs his law, plaintiff is for ever barred; but if he doth not appear, he may bring a fresh action against defendant for the same debt. The oath of compurgators may be dispensed with by consent of plaintiff. 1 Vent. 4.

Defendant cannot be admitted to wage his law instantly after imparlance, but he may before, because then plaintiff cannot be nonsuited, if defendant perfects his law. *Gill. Hist. of K. B.*

OUTLAWRY.

O U T L A W R Y.

In a joint action, where one party is served or taken on process, and the other cannot be served or taken, it is necessary to proceed to an outlawry against the refractory party, before judgment can be obtained against either in the said action. As also *on original*, if defendant cannot be arrested on *capias*, *alias*, or *pluries*, the filazer will make out an exigent and proclamation, to which writ defendant must enter a common appearance, or put in special bail, according to the nature of the action; but if he does not, the plaintiff may take out a *capias ut legatum*, which writ is of two kinds, *general* or *special*; the general *capias* has a lien on the body only, the special affects defendant's goods, lands, tenements, and body also. If defendant is taken on either of these writs, he must give bail to answer the condemnation money.

To prevent secret outlawries in personal actions, where the defendant has a known place of abode, a writ of *proclamation* must be awarded, having a *teste* and return as well as the writ of *exigent*, they both must be directed to the sheriff of the county where defendant resides. The sheriff is to make one proclamation in the county court, a second at the general quarter sessions, and a third a month, at least, before the *quint-exact*, (or *fifth and last time of proclaiming defendant*) at the principal door of the parish church where defendant then resides, or last resided. The fourth and fifth proclamations are made at the two next following county courts, which are held but once a month: But in *London* the proceedings are much expedited, the court of hustings being held every fortnight.

Carry *precipe* for original to Mr. Adams, who makes out same; in debt, he charges 2s. and 6d. in case, 2s. and 6d. first count, and 6d. every

other, besides King's fine. You may make out *capias*, *alias*, and *pluries* yourself, for which he charges as on common *capias*, &c. get same returned by sheriff *non est inventus*, to ground out-lawry, each of which writs must have fifteen days between the date and return; *capias* and *alias* are filed with the *custos breviarum*, Mr. Filmer, Holborn Court, Gray's Inn. The *pluries* the exigenter keeps.

On writ's being returned, file a warrant of attorney on the *pluries* with the clerk of the warrants; pay for same 4d. Clerk of the warrants stamps *pluries*, which done, carry *pluries* to exigenter of the proper county, who makes out exigent and proclamation.

You must get exigent and proclamation sealed, then carry exigent to one of the compters (if in London) to be returned; pay 1s.; and the proclamation to the county clerk; pay him 1s. (or to the sheriff of the county where defendant dwells) for defendant to be proclaimed. If in London, and on return of exigent, there are not five huffings returned, exigenter will make out *allocatur* to bring in five huffings, and when that is done, and proclamation returned, the defendant is outlawed. After proclamation returned, file same with *custos breviarum*. And the exigent is carried to exigenter to make out *capias ultimum*.

Exigent.

GEORGE the Third, &c. To the sheriff of Middlesex, Greeting: WE command you, that you cause *A. B.* late of the parish of St. Clement Danes, in your county, taylor, to be demanded from county court to county court, until, according to the law and custom of our kingdom of England he be outlawed, if he does not appear, then take him and keep him safely, so that you may have his body before us, from the day of Easter, in fifteen days, (or some other original return) wheresoever we shall then be in England, to answer to *C. D.* of a plea, for that, to wit, That whereas the said *A.* on, &c. (here the writ

where

whole declaration is inserted) to the damage of the said C. of two hundred pounds, as it is said; and whereupon you did in fifteen days of St. Hilary last past, make a return to us, that the said A. B. was not found in your bailiwick, and have you there this writ. Witnesses, *William Lord Mansfield*, at *Westminster*, the 6th day of *November*, in the twelfth year of our reign.

Adams.

Indorse attorney's name, day, month, and year sued out.

Middlesex, to wit, C. D. puts in his stead Warrant of R. R. his attorney, against A. B. of a plea, ^{attorney on} _{exigent.} (as case is).

GEORGE the Third, &c. To the sheriff ^{Proclama-} of *Middlesex*, Greeting: WHEREAS by our ^{tion.} writ we have lately commanded you, that you cause A. B. late of the parish of St. *Clement Danes*, in your county, taylor, to be demanded from county court to county court, until, according to the law and custom of our kingdom of *England*, he be outlawed, if he shall not appear; and if he should appear, then that you should take him and keep him safe, so that you might have him before us, from the day of *Easter* in fifteen days, wheresoever we should then be in *England*, to answer to C. D. of a certain plea of trespass on the case, to the damage of the said C. of two hundred pounds, as it is said: WE therefore command you, that pursuant to the statute made for such purpose, in the thirty-first year of the reign of *Elizabeth*, late Queen of *England*, you cause the said A. B. to be proclaimed three several days, according to the form of the said statute; one of which proclamations to be made at or near the most usual church door of the parish where the said A. B. is an inhabitant, that he render

B 3

himself

himself to you, so that you may have his body before us at the aforesaid time, to answer the said *C. D.* of the plea aforesaid; and have you there this writ. Witness, *William Lord Mansfield*, at *Westminster*, the 6th day of *November*, in the twelfth year of our reign. *Adams.*

Indorse attorney's name, day, month, and year sued out.

Return of
exigent.

At my county court held for the county of *Middlesex*, at the sign of the *Elephant and Castle*, in the parish of *St. Andrew, Holborn*, in the county aforesaid, on the _____ day of _____ in the year within written, the within-named *A.* was a first time demanded, and did not appear; and at my county court held for the said county of *Middlesex*, at the sign of the *Elephant and Castle* aforesaid, the _____ day of _____ in the year aforesaid, the said *A.* was a second time demanded, and did not appear; and at my county court held for the said county of *Middlesex*, at the sign of the *Elephant and Castle* aforesaid, the _____ day of _____ in the year aforesaid, the said *A.* was a third time demanded, and did not appear; and at my county court held for the said county of *Middlesex*, at the sign of the *Elephant and Castle* aforesaid, the _____ day of _____ in the year aforesaid, the said *A.* was a fourth time demanded, and did not appear; and at my county court held for the said county of *Middlesex*, at the sign of the *Elephant and Castle* aforesaid, the _____ day of _____ in the year aforesaid, the said *A.* was a fifth time demanded, and did not appear.

Therefore by the judgment of *Thomas Phillips*, Esq; and *Edward Umfreville*, Esq; coroners of our Sovereign Lord the King, for the county aforesaid, the said *A.* is outlawed.

The

The ANSWER of

John Wilkes, Esq; }
 and } Sheriff.
Frederic Bull, Esq. }

By virtue of the within writ to me directed, Return of
 I caused the within named *A.* to be proclaimed the procla-
 three several days, according to the effect of the procla-
 within-mentioned statute, as it is within com-
 manded me.

The ANSWER of

John Wilkes, Esq; }
 and } Sheriff.
Frederic Bull, Esq. }

GEORGE the Third, &c. To the Sheriff ^{Special cap.}
 of Middlesex, Greeting: WE command you, ^{ut legatum.}
 that you fail not on account of any liberty within
 your county, but that by the oath of good and
 lawful men of your county, you diligently in-
 quire what goods and chattels, lands and tene-
 ments, *A. B.* late of the parish of *St Clement*
Danes, in your county, taylor, hath or had in
 your bailiwick, on the day of
 last past, or at any time after-
 wards, on which day he was outlawed in your
 county, at the suit of *C. D.* in a certain plea of
 trespass on the case, to the damage of the said
C. of two hundred pounds, as you have returned
 to us some time since, and by their oath cause
 the same to be extended and appraised accord-
 ing to the true value thereof: And whatever
 you find by that inquiry, take into your hands
 and keep safe, so that you answer to us the value
 and issue thereof; and having so extended and
 appraised the same, what you shall have done
 therein

The Modern Practice of the

therein make known unto us, on the Morrow of the Holy Trinity, in three weeks, wheresoever we shall then be in England, distinctly and plainly under your seal, and the seals of those by whose oath you shall have made the extent and appraisement: And for that the said *A. B.* conceals himself, and runs up and down from place to place in your county, in contempt of us, and in prejudice to our crown, as we are informed: WE COMMAND you also, that you take the said *A. B.* wheresoever he shall be found in your bailiwick, as well within a liberty as without, and keep him safe, so that you may have him before us at the aforesaid time, to do and to receive what our court before us shall in this case determine; and have there this writ. Witness, *William Lord Mansfield*, at *Westminster*, the 1st day of *June*, in the twelfth year of our reign.

Adams.

Indorse attorney's name, day, month, and year when sued out.

Return of
special cap.
ut legatum.

BY virtue of this writ to me directed, I have taken the body of the within-named *A. B.* whose body I kept in my safe custody until afterwards, to wit, on the 19th day of *June*, in the twelfth year of his now Majesty's reign, on which day I received his Majesty's writ of *habeat corpus cum causa*, to me directed; by virtue of which writ, immediately after the receipt thereof, to wit, on the 20th day of *June*, I did conduct the body of the said *A. B.* before *Sir Richard Aston*, Knight, one of the Judges of the court of our Lord the King, before the King himself, according to the command of the said writ, which said Judge did then receive from me the body of the said *A. B.* and did commit him to the custody of the marshal of the *Marshalsea*

ja

sea of our Lord the King, and did then discharge me from the further keeping of the said *A. B.* and therefore I cannot have the body of the said *A. B.* before our Lord the King on the day within-mentioned, wheresoever our said Lord the King shall then be in *England*, as by the said writ I am commanded. The further execution of this writ appears in the inquisition and inventory hereunto annexed.

The A N S W E R of

John Wilkes, Esq; }
and } Sheriff.
Frederic Bull, Esq. }

Middlesex, An Inquisition indented, taken at The inquisition. The *Three Tuns* in *Brook Street*, near *Holborn*, in the county aforesaid, the

day of in the twelfth year of the reign of our Sovereign Lord *George* the Third, by the grace of God of *Great Britain*, *France*, and *Ireland* King, defender of the faith, &c. before me *John Wilkes*, Esq; and *Frederic Bull*, Esq; Sheriff of the county aforesaid, by virtue of the King's writ to me directed, and to the inquisition annexed, on the oath of *Thomas Smith*, *James Greathead*, *John Coots*, *Robert Freeland*, *William Ward*, *Peter Davis*, *George Hufsey*, *Samuel Wright*, *David Gilbert*, *Richard Hogg*, *John Price*, and *Stephen Worlidge*, good and lawful men of my bailiwick, who being sworn and charged to inquire of all such matters and things as in the said writ are mentioned and contained, on their oaths do say, That *A. B.* in the said writ named, on the

day of last, on which day he became outlawed, was, and on the day of taking this inquisition, is possessed as of his own proper goods and chattels, of and in the several goods

The Modern Practice of the

goods and chattels particularly mentioned and expressed in the schedule or inventory thereof hereunto annexed, which said goods and chattels are worth, to be sold, the sum of eighty-seven pounds thirteen shillings. All which said goods and chattels, I the said sheriff, by virtue of the said writ, on the day of taking this inquisition, have seized and taken into his Majesty's hands, according to the command of the said writ: And the jurors aforesaid, on their said oaths further say, That the said *A. B.* on the said day of

or at any time since, had not any lands or tenements, or on the day of taking this inquisition, hath any other goods or chattels in my bailiwick, which can be seized or taken into his Majesty's hands, according to the command of the said writ. In witness whereof, as well I the said sheriff, as the said jurors, have to this inquisition set our seals the day, year, and place first above mentioned.

Sheriff annexes to the above inquisition a complete schedule of the effects seized.

Venditioni
exponas.

GEORGE the Third, by the grace of God, of Great Britain, France, and Ireland King, defender of the faith, &c. To the sheriff of *Middlesex*, Greeting: WHEREAS by a certain inquisition indented, taken at the *Three Tuns* in *Brook Street*, near *Holborn*, in the said county, the day of last, before you *John Wilkes*, Esq; and *Fredric Bull*, Esq; sheriff of our said county, by virtue of our writ of *capias ut legatum*, under the seal of our court of King's Bench, to you the said sheriff directed, whereby we commanded you to inquire what goods and chattels, lands and tenements, *A. B.* late of the parish of *St. Clement Danes*, in the county of *Middlesex*, taylor, had within

Maßam.

By

The Modern Practice of the

Sheriff's re-
turn.

By virtue of this writ to me directed, I have caused the goods and chattels in the schedule or inventory hereunto annexed mentioned, to be sold for the sum of £. being the best price I could get for the same, which monies I have before the Barons of the King's Exchequer at *Westminster*, on the day within mentioned, ready to pay to his Majesty's use, according to the command thereof.

The ANSWER of

John Wilkes, Esq;
and
Frederick Bull, Esq; } Sheriff.

Plaintiff's
petition to
the Lords of
the Treasury
for the mo-
ney levied to
be paid to
him.

To the Right Honourable the Lords Commis-
sioners of His Majesty's Treasury,

The Humble PETITION of C. D.

Sheweth,

THAT *A. B.* late of the parish of *St. Clement Danes*, in your county, taylor, being indebted to your petitioner in the sum of 100*l.* your petitioner did, at his very great charge, in last, prosecute the said *A. B.* to an outlawry, and by virtue of a special *capias utlegat.* directed to the sheriff of *Middlesex*, several goods of the said *A. B.* were seized and found by inquisition to be of the value of 87*l.* 13*s.* which goods were afterwards sold by the said sheriff by virtue of a writ of *venditioni exponas* at the same price and value they were so appraised at, and the money thereupon raised now remains in the hands of the sheriff of *Middlesex*.

THAT your petitioner's said debt and charges he hath already been at, in prosecuting the said outlawry, greatly exceeded the sum so remaining in the said sheriff's hands.

WHERE-

WHEREFORE your petitioner most humbly prays your lordships, that the money to be levied as aforesaid, may be paid over to your petitioner.

AND your petitioner, as in duty bound, shall ever pray, &c.

C. D.

Whitehall Treasury Chamber,

August 1772.

Re'ERENCE of
Treasury
board.

The Right Honourable the Lords Commissioners of his Majesty's Treasury, are pleased to refer this petition to T. N. Esq; who is to consider the same, and report to their Lordships a true state of the petitioner's case, together with his opinion what is fit to be done therein.

J. G.

C D. of, &c. maketh oath, that A. B. late of the parish of St. Clement Dares, in the county of Middlesex, tailor, is justly and truly indebted to him, this deponent, in the sum of

Plaintiff's
affidavit of
amount of
his debt and
charges.

l. for goods sold and delivered by this deponent to the said A. B. for which debt this deponent did cause several writs successively to be issued out of his Majesty's court of King's Bench against the said A. B. and did use his utmost endeavours to get the said A. arrested on each of the said writs: But this deponent, not being able to procure any of the said writs to be executed, did cause the said A. B. to be sued to an outlawry, and thereupon several of his goods, to the amount of l. to be seized into his Majesty's hands, and sold by virtue of a writ of *venditioni exponas*, as this deponent is informed and believes: And this deponent saith, that his attorney's bill for fees and disbursements in outlawing the said A. B. and

C c

causing

HERE-

The Modern Practice of the

causing his goods to be seized and sold, doth amount unto the sum of 1. as appears to this deponent, by such bill delivered to him by his said attorney; which bill this deponent, as far as he is capable of judging, believes to be just and reasonable: And this deponent also saith, he hath paid the several following sums of money on account of such outlawry; and which said sums of money are not included or comprehended in his said attorney's bill of fees and disbursements made by him, viz. To the sheriff's officer for executing the writ of *capias ut legatum* 2 l. 2 s. To two appraisers appraising the said goods, the sum of 2 l. 2 s. To the sheriff's officer, the further sum of 6 l. 5 s. 3 d. which he demanded of his deponent for being days in possession of the said goods in the defendant's house, for charges of removing the same, and for ware-house rent for the said goods where they were deposited till sold, which said several sums of 2 l. 2 s. 2 l. 2 s. and 6 l. 5 s. 3 d. do, together with this deponent's debt of 1. amount unto the sum of 1. besides the fees to be paid in the Treasury and other offices in obtaining his Majesty's warrant, which this deponent is informed and believes will amount to 1. more.

Sworn, &c.

C. D.

This affidavit must be ingrossed on a sheet of treble sixpenny stamped paper, sworn before one of the Barons of his Majesty's Exchequer, and lodged with petition.

Sol'citor's
report on re-
ference made
to him.

To the Right Honourable the Lords Commis-
sioners of His Majesty's Treasury.

May it please your Lordships,

In humble obedience to your Lordships com-
mands, signified to me by Mr. J. G. I have
con-

considered of the annexed petition of *C. D.* setting forth, that *A. B.* late of the parish of *St. Clement Danes*, in the county of *Middlesex*, taylor, being indebted unto him in the sum of

l. he did, at a very great charge, in last, prosecute the said *A* to an outlawry, and by virtue of a special *capias utlegatum* directed to the sheriff of *Middlesex*, several of the goods of the said *A. B.* were seized and found by inquisition to be of the value of

l. which goods were afterwards sold by the said sheriff, by virtue of a writ of *venditioni expenas*, at the same price and value they were so appraised, and the money thereupon raised, now remains in the hands of the sheriff of *Middlesex*, that the defendant's said debt and the charges he has already been at in prosecuting the said outlawry, greatly exceeds the sum so remaining in the said sheriff's hands, the petitioner therefore prays your Lordships, that the money so levied may be paid over to him.

AND I do most humbly certify to your Lordships, that I have received satisfaction as to the truth of all the allegations in the said petition contained, as well by the sight of the several records thereby referred unto, and a certificate of the said outlawries being transcribed into the office of his Majesty's Remembrance of the Exchequer, signed by Mr. *Henry Ord*, one of the attornies of that office, as by the affidavit of the petitioner, whereby it appears to me, that the said *A. B.* is indebted to the petitioner in the sum of l. for goods sold and delivered by the said petitioner to him: And it appearing by the affidavit of the said petitioner, that his said debt, with the several charges he had been already put to in outlawing the said *A. B.* do exceed the sum levied by the sheriff; and as the petitioner must still necessarily be put

The Modern Practice of the

to a further expence, I am most humbly of opinion, that it may be proper for your Lordships to send your warrant to his Majesty's Attorney General, authorizing him to consent to an order of his Majesty's court of *Exchequer* for *John Wilkes*, Esq; and *Frederick Bull*, Esq; the present sheriff of the county of *Middlesex*, paying over the said sum of 1. now remaining in their hands (after deducting the sheriff's poundage for levying the same, and other incident charges) unto the petitioner, for his own use, towards satisfaction of his said debt and costs, whenever a motion shall be made in the said court of *Exchequer* for that purpose.

ALL which is nevertheless most humbly submitted to your Lordships superior judgment.
T. N.

August 1772.

GEORGE R.

Treasury
warrant for
Attorney
General to
consent to
sheriff's pay-
ing the mo-
ney levied to
plainiff.

WHEREAS we are given to understand, that there is remaining in the hands of *John Wilkes*, Esq; and *Frederick Bull*, Esq; the present sheriff of the county of *Middlesex*, the sum of 1. for so much money levied by him on the several goods belonging to *A. B.* which were seized into our hands by virtue of an inquisition taken by virtue of a writ of *capias ut legatum*, issued out of our court of King's Bench against the said *A. B.* at the suit of *C. D.* for the recovery of a debt due and owing to him from the said *A. B.* AND WHEREAS it further appears by reports, certificates, and other proper testimonials, which the commissioners of our treasury have laid before us, that the debt due and owing to the said *C. D.* from the said *A. B.* together with the costs which he hath been

To
be
le
G
Ca
and
of M
ing:
excul
every

been at in carrying on the said prosecution against the said *A. B.* for the recovery of the said debt, doth exceed the said sum of 1. remaining in the hands of the said sheriff as aforesaid; TO THE END therefore, that the said *C. D.* may have and receive some recompence and satisfaction towards his said debt, and the charges he hath been at in suing for the same: OUR will and pleasure is, and we do hereby authorize and direct you to consent and agree, that so much of the said sum of 1. as doth or shall remain in the hands of the said sheriff (after deducting the usual poundage for levying the same) be paid over to the said *C. D.* towards satisfaction of his said debt and costs accordingly, whenever he, by his counsel learned in the law, shall think fit to move our court of *Exchequer* for an order for that purpose: And we do also authorize and direct you to do, or cause to be done, such further or other acts as our said court of *Exchequer*, upon such motion, shall, or may judge necessary for rendering our intentions herein most firm, valid, and effectual: And for so doing, this shall be your warrant. GIVEN at our court at St. James's, this day of August 1772, in the 12th year of our reign.

By His Majesty's Command.

To Our trusty and well-	}	N.
beloved <i>Edmund Thurler</i> , Esq; our Attorney General.		L.
		N.
		B.

George the Third, &c. To *John Wilkes*, Esq; Subpoena. and *Frederick Bull*, Esq; sheriff of our county of *Middlesex*, or to their under-sheriff, Greeting: We command you, that laying aside all excuses, you obey, fulfil, and perform all and every matter and thing specified in an order of our

The Modern Practice of the

our court of Exchequer at *Westminster*, made in a cause in our said court, depending between us and *A. B.* outlawed at the suit of *C. D.* upon an outlawry, the tenor of which order, for your fuller information therein, is hereunto annexed: And this you are not to omit, under penalty of 100 l. which we shall cause to be levied upon your goods and chattels, lands and tenements, for our use, if you neglect this our command. Witness Sir *Thomas Parker*, Knight, at *Westminster*, &c.

Masbam.

Order for
sheriff to pay
the money
to plaintiff.

IT IS FOUND in a certain book of orders of this Exchequer, *to wit*, amongst the orders of *Term*, in the 12th year of the reign of King *George the Third*, in the _____ page, on the part of this remembrancer, as follows:

Tuesday, the _____ day of
1772.

*Between the King and A. B. outlawed at the
suit of C. D.*

Upon an outlawry upon the motion of Mr. *Murphy* of counsel with *C. D.* informing the court, that the said *A. B.* having been persecuted to an outlawry by the said *C. D.* upon an action of trespass upon the case, in his Majesty's court of King's Bench, a writ of outlawry thereupon issued against the said defendant, under the seal of the said court, directed to the sheriff of *Middlesex*, by virtue whereof the said sheriff seized by inquisition several goods and chattels belonging to the said defendant, appraised at

l. AND further informing the court, that the said writ of outlawry and inquisition being transcribed into this court, a writ of *conditioni exponas*, under the seal of this court, is

fact

sued on the day of last,
for selling the said goods, returnable the
day of at which time *John Wilkes*,
Esq; and *Frederick Bull*, Esq; the present she-
riff of *Middlesex*, returned the said writ, and
certified, that they had sold the said goods and
chattels, for the said sum of l. It was
therefore prayed by the said Mr. *Murphy*, that
the said *John Wilkes*, Esq; and *Frederick Bull*,
Esq; or their under-sheriff, might forthwith pay
to the said C. D. or his order, the said sum of

l towards satisfaction of the debt due
from the said defendant to the said prosecutor;
whereupon, and on hearing, *Edmund Thurloe*,
Esq; his Majesty's Attorney General consent-
ing thereto, on behalf of his Majesty, IT IS
ORDERED by the court, as prayed by the said
sheriff, first deducting out of the said l.
the usual poundage.

Masbam.

On the special CAPIAS UTLEGATUM, Observation,
if any goods are taken, and defendant does not
put in bail, you must proceed to get satisfaction
out of the goods in manner following:

Get sheriff to take inquisition pursuant to
writ. It is most prudent to give defendant no-
tice of executing same, as you do on inquiry.
Get writ returned by sheriff, and inquisition
transcribed by filacer, into the Exchequer.
When there, employ clerk in King's Remem-
brancer's Office, who will procure you a writ
of *venditioni exponas*, on which sheriff will sell
goods. Then you proceed to petition Lords of
Treasury, that money levied may be paid to
plaintiff. Petition being referred by them to
their solicitor, you attend him with the *ven-
ditiōni exponas* returned by sheriff; and also with
an affidavit of plaintiff's debt and charges, &c.
If he reports in your favour, one of the Trea-
sury

The Modern Practice of the

fury clerks procures you a warrant for attorney general to consent on moving the Exchequer.

If goods taken on the *cap. utl.* do not amount to 50 l. or 60 l. they will not bear the charge of proceeding against them.

If the sum levied does not exceed 20 l. no application to the treasury necessary. The court of *Exchequer* will order the money levied to be paid to the plaintiff.

The METHOD of reversing Outlawry.

If defendant apprehends such a procedure, or has notice of an exigent issued against him, he must apply to the sheriff office, and get a short note of writ, which he must carry to filacer, who, on defendant's attorney's entering appearance with him, or putting in bail, according to the nature of the case, will make out *superfedeas*, which must be carried to sheriff, who allows same.

This must be done before exigent is returnable, or defendant is too late to do same, without paying costs incurred on outlawry.

The expence of procuring *superfedeas* is as follows:

Appearance,	-	-	-	0	2	0
Superfedeas,	-	-	-	0	3	0
Duty,	-	-	-	0	2	0
Sealing,	-	-	-	0	0	7
Sheriff for allowing same,	-	-	-	0	2	4
						<hr/>
						0 9 11

GEORGE

GEORGE the Third, &c. To the sheriff Writ of *superfedeas*.
of *Middlesex*, Greeting: WHEREAS by our writ we have lately commanded you, that you should cause *A. B* late of the parish of *St. Clement Danes*, in the county of *Middlesex*, taylor, to be demanded from county court to county court, until, according to the law and custom of our kingdom of *England*, he be outlawed, if he did not appear; and if he appeared, then that you should take him and keep him safe, so that you might have him before us, (*the return*) wheresoever, &c. to answer to *C. D.* of a certain plea of trespass on the case, to the damage of the said *C.* of l. as is said. NOW forasmuch as the said *A.* before the issuing our said writ of *Exigent*, appeared in our court before us, by *T. C.* his attorney, and often offered to answer the said *C.* of the plea aforesaid, our said writ did not duly issue, WE therefore command you, that you forbear all further demanding the said *C.* or outlawing, taking, or any way molesting him on that occasion; and have there this writ. Witness, *William Lord Mansfield*, at *Westminster*, &c.

Adams.

Superfedeas to *Exigent* must be delivered to Practical sheriff before return of *Exigent*, or defendant marks. may be outlawed.

Defendant may render himself before return of *Exigent*.

No outlawry can be reversed after death of plaintiff, without defendant's putting in bail, if original action requires it.

Defendant on appearing to reverse outlawry, must pay plaintiff all costs to *Exigent*. The further costs respited till judgment.

Where goods taken on *capias utlegatum*, if defendant brings *superfedeas* to reverse outlawry, he

The Modern Practice of the

he must pay the costs incurred, before he can get certificates from clerk of the outlawries.

Plaintiff cannot be nonprossed after outlawry reversed.

Bail must be put in to reverse outlawry, where original action required special bail. 3 *Bur.* 1920.

Bail put in by defendant to reverse outlawry, cannot render principal; he or they must pay the money, if he is condemned in the action.

The process of outlawry is not within stat. 12 *Geo.* 1. 3 *Bur.* 1484.

Defendant hath till the *quarto die post* to appear to *Exigent*.

If a person outlaws a defendant when a prisoner, he can have no costs, and must reverse same at his own expence.

After outlawry reversed, plaintiff must declare against defendant in two terms, or on a four-day rule given by defendant, plaintiff must pay costs. *Trin.* 33 *Car.* 2. *Trin.* 2 *Geo.* 1.

The METHOD of suing a Person to an Outlawry after Judgment.

If a person lurks so that you cannot levy execution, or take his body, sue out a *ca. sa.* into county where original action brought; get same returned by sheriff *non est inventus*. Then carry writ so returned to *Exigent* of same county, who will make you out writ of *Exigent*, which you deliver to under sheriff to be returned; when returned, clerk of the outlawries will make out a *capias utlegatum* general or special, into as many counties as you please. If defendant is taken, he cannot be discharged without making satisfaction to plaintiff, or by pardon of outlawry, or reversing it for sufficient error.

Practical remarks.

Defendant cannot be outlawed after judgment, where the proceedings are by bill, and not

not by original writ, nor after a writ of error brought by defendant.

PROCEEDINGS *on* DISTRESS and REPLEVIN.

D I S T R E S S.

The landlord, or owner of premises, may Observation, distrain the goods, &c. himself, but if he employs another so to do, he must give him a warrant or authority in writing, or he will not be justified in making a distress.

To Mr. *I. K.* my bailiff, Greeting.

DISTRAIN the goods and chattels of *A. B.* Warrant of distress.
in the house he now dwells in, situate in
in the county of
for l. being
two years rent, (*or as the case is*) due to me for
the same at *Michaelmas* day last; and for your so
doing, this shall be your sufficient warrant and
authority. Dated day of *August*,
1772.

I. F.

I *J. K.* as bailiff to Mr. *J. F.* do distrain Words of
this (*the first chattel you lay your hands on when in* Words of
the house) in the name of all the goods and chat- distress.
tels in this house, for and towards satisfaction
and payment of the sum of l. being two
years rent, at l. *per ann.* due to the said Mr.
J. F. at *Michaelmas* day last.

You then proceed to take an inventory of so
much of the goods as you judge will be sufficient
to cover the rent and charges of distress.

An

Form of inventory.

AN INVENTORY of the goods and chattels distrained by me *J. K.* bailiff to Mr. *J. F.* in the dwelling house of *A. B.* situate at in the county of this day of *August*, 1772, being for two years rent due at *Michaelmas* day last, and as yet in arrear and unpaid. *Imprimis*, (*herein insert goods distrained*).

Notice to be wrote at bottom of inventory.

These are to give you notice, That as bailiff to Mr. *J. F.* I have distrained the goods and chattels mentioned in this inventory, for the sum of 1. being for two years rent due at *Michaelmas* day last, for the premises above mentioned, and that unless the said arrears of rent and charges of distress be paid, or the goods be replevied in due time, the same will be appraised and sold according to law.

Yours, &c. *J. K.*

Note.

A true copy of this inventory and notice must be left with the tenant, or some of his servants, if there is any person in the house, or fastened on the door, or put into the key-hole, or left in some notorious place of the house, if no body therein. It is proper to have a person with you, when you make a distress, to examine the inventory, and to be a witness to the transaction, if called on for that purpose.

The safest way is to remove the goods immediately, and in your notice to acquaint tenant where they are removed; but it is now most usual to let them stay on the premises, and leave a man in possession to protect them till you are intitled to sell them by law, which is on the seventh day, because the statute says, You are to give five days notice, and it is held and understood to be five whole days, which must be exclusive of the day distress made.

If the tenant wants further time to raise the money, and landlord chuses to give him such indulgence, he must take a memorandum from tenant, that possession is continued at his request, and by his desire, or landlord would be a trespasser in continuing same beyond the time limited by the statute, and liable to an action for so doing.

On the seventh day, you should search the sheriff's office to see if the goods are replevied; if not, go to the premises, and if tenant is there, or any body on his behalf, demand the rent and charges of distress. If he does not pay the same, send for a constable and two sworn appraisers; let them see the goods taken in distress, and then the appraisers must be sworn by the constable, by laying both their hands upon a Bible having the New Testament in it. The common way is for the appraisers to buy the goods at their own valuation, and a receipt at the bottom of the inventory witnessed by the constable, is considered as a sufficient discharge; but if the goods taken in distress are of great value, let there be a proper bargain and sale between the landlord, the constable, the appraisers, and the purchaser, for the better proving the transaction afterwards, if there should be occasion. The constable must administer to the appraisers the following oath:

You and either of you shall make a true appraisement of the goods now shewn to you, and mentioned and contained in this inventory, (the constable having at the same time the inventory in his hand, and shewing it to them) according to the best of your judgment. So help you God.

Appraiser's
Memorandum to be
indorsed on
inventory.

MEMORANDUM, That on the
day of August, 1772, E. F. of, &c. and I. G.
of, &c. two sworn appraisers, were sworn upon
the Holy Evangelists by me L. M. of, &c. con-

D d

stable,

The Modern Practice of the

stable, to make a true appraisement of the goods mentioned in this inventory, according to the best of their judgment. Witness my hand,

L. M. constable.

PRESENT at the time of

swearing, the said *E. F.*

and *I. G.* as above, and

Witnesses thereto,

O. P.

K. I.

After the appraisers are sworn, and have viewed and valued the goods, indorse the following memorandum on the inventory for the appraisers to sign.

Appraisers
Valuation.

We the above-named *E. F.* and *I. G.* being sworn upon the Holy Evangelists, by *L. M.* the constable above-named, to make a true appraisement of the goods mentioned in the above inventory, according to the best of our judgment, and having viewed the said goods, DO adjudge and value the same at the sum of *l.* and no more. As witness our hands, this day of *August*, 1772.

E. F.

I. G.

After the goods are sold for the best price you can get for the same, you must deduct the arrears of rent and all reasonable charges, and the overplus (*if any*) must be paid or applied to the tenant's use.

Form of memorandum where possession is continued above five days, at request of tenant.

MEMORANDUM made this *August*, 1772. I *A. B.* do hereby consent and agree, that *C. D.* the landlord, shall keep and continue in possession of the goods and chattels situate in a messuage or tenement in *Shoreditch*, in the county of *Middlesex*, belonging to, &c. which are distrained by him for 10*l.* being two years rent due on the 24th day of *June* last past, for ten days from this date, in order to enable me

to raise the same; as witness my hand the day
and year aforesaid.

A. B.

Witness J. R.

If sheriff is in possession of the goods of a tenant, landlord need not make a distress, but should forthwith serve sheriff with the following notice:

TO John Wilkes, Esq;
and Frederick Bull, } Sheriff of Middlesex.
Esq;

Take notice, that there is now due from A. B. the person to whom the goods belong you are now in possession of, by virtue of his Majesty's writ of *feri fac.* returnable (the return) the sum of 1. for one year's rent due to me at Ladyday last. As witness my hand, this day of 1772. C. D.

Landlord of the said premises.

Books of a scholar, an anvil in a smith's shop, and a mill stone that is severed for pick-marks.

ing, &c. fish in a pond, and poultry, tools of trade, cattle of the plough, if sufficient distress without, a garment or cloth in a taylor or weaver's shop, sacks of corn or meal in a mill or market, corn growing, or ground, a horse in a smith's shop or inn, are not distrainable; nor is any thing on which replevin will not lie, the doctrine of distress being, that all things replevable are liable to distress. 3 Burr. 1500.

If goods taken in execution, landlord is entitled to a year's rent and no more. Stat. 8 Ann.

The executor or administrator of a landlord hath the same right under the equity of the 8 Ann, being an interest vested. Fortesc. Rep. 360. Strange 214.

The ground landlord is not within the meaning of the Stat. 8 Ann. 2 Strange 787.

D d 2

Where

Where land let for a year, and afterwards at will, for less rent than before, and both rents made payable half yearly; if at the end of the first half year, under the last demise an execution comes, the landlord is intitled only to the two last half year's rent. *Andr.* 218.

If land let for a year, and then part thereof at will, if execution comes, the landlord is not intitled to any part of the first year's rent. *Andr.* 219.

There is a proviso in *Stat.* 8 *Ann.* that same does not extend to the King; so that landlords on extents, outlawries, &c. are excluded from their rent, when on execution at the suit of the King.

Living things distrained must be put in a pound *overt*, that tenant may feed them: landlord may put them in a pound *covert*, but then he must keep them at his peril, without being able to recover such expence from tenant. 1 *Inq.* 47. b. 2 *Inq.* 106.

Goods that may receive damage from the weather, must be put where they will be secure therefrom; if damaged, landlord is answerable. *Ibid.*

Distress of cattle or goods not to be taken or driven out of the county where distress made, nor above three miles from the place where taken. Goods distrained at one time, shall not be impounded in several places, so that owner be forced to sue several replevins, under forfeiture of 5 l. to party aggrieved, and treble damages. Pound keeper not to take for poundage above 4 d. under forfeiture of 5 l. and the money above the 4 d. *Stat. Marl. & Westm.* 1. 1 & 2 P. & M.

A cow distrained cannot be milked by the distrainor; if she perish for want thereof, he may distrain again. 2 *Leon.* 174.

The distrainor cannot work a distress of live cattle, because he hath no property therein, nor possession

possession *in jure*, the law gives it him only as a pledge or security. *Dyer* 280.

A landlord may enter the house of his tenant to distrain, if the door be open; but if barred, he must not break it open to make his distress.

38 *Hen. 6. Fitz. Distress* 21.

A landlord making an excessive distress, is to be grievously amerced. *Stat. 52 Hen. 3. 1 Vent. 104.*

A horse bringing goods to market, goods brought to market to be sold, goods on a wharf or warehouse for exportation, goods in the hands of a factor, goods delivered to a carrier to be carried for hire, and wool in a neighbour's barn, are goods of a third person, which cannot be distrained by a landlord for rent, tho' found on his premises. 3 *Bur. 1498.*

Goods left at an inn, or other place, a chariot standing in a coach-house belonging to a common livery stable, being parcel of and rented with said livery stable, may be distrained by the landlord for rent in arrear, tho' the property of a third person; so may goods or household furniture of a lodger or inmate. 3 *Bur. 1504.*

REPLEVIN.

When a person hath distrained on another for rent which is not due, or which hath been satisfied by the distrained, in an account between him and his landlord, or otherwise; the only method the law allows the party injured for redress is to replevy the goods, and thereby bring the procedure before a court and jury to determine the legality of such distress.

The party distrained on, must, within the time allowed by the statute to replevy, take

D d 3

two

The Modern Practice of the

two house-keepers living in the city or county where distress made, to the sheriff's office of such city or county, and enter into a bond to prosecute his suit (*so commence by entering into the said bond*) against the distrainer, with effect.

Form of a
bond in re-
plevin, by
stat. 11 Geo.
2.

Know all men by these presents, That we *A. B.* of *Lewes*, in the county of *Sussex*, gent. *C. D.* of the same town and county, yeoman, and *E. F.* of *East Grinstead*, in the said county, inholder, are held and firmly bound to *G. H.* Esq; sheriff of the county aforesaid, in the sum of 100 l. of lawful money of *Great Britain*, to be paid by the said *A. B.* or his certain attorney, executors, administrators, or assigns; for which payment to be well and truly made, we bind ourselves, and each of us binds himself for the whole, and in gross, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, the day of 1772, and in the 12th year of the reign of our Lord *George the Third*, by the grace of God, of *Great Britain, France, and Ireland*, King, defender of the faith, &c.

The condition of this obligation is such, that if the above-bounden *A. B.* do appear at my next county court, to be holden for the county of *Sussex*, at the town of *Lewes*, on the day of next, and do prosecute there with effect, his suit which he hath commenced against *H. H.* for the taking and unjustly detaining of three horses, (*or as case may be*) the goods of him the said *A. B.* and to make return of the said goods, if the return of the same shall be adjudged; that then this present obligation shall be void and of none effect. Sealed, &c.

This bond is assignable in four days exclusive, after the time limited therein for the obligor to prosecute his suit; and if it is not complied with,

the distrainor, on applying to sheriff may have an assignment. The sheriff charges the same for the assignment, as on any other bail bond; and the same steps must be taken to complete bond, as is usual on bail-bonds before suit commenced thereon against principal and bail. The proceedings on the replevin bond are the same as on common bail bond, *mutatis mutandis*.

KNOW ALL MEN *by these presents*, That I G. H. Esquire, sheriff of the county of Form of assignment of replevin bond.
have, at the request of the above named H. H. the avowant in this cause, assigned over unto him the said H. H. this replevin bond, pursuant to the act of parliament in that case made and provided. IN WITNESS whereof, I have hereunto set my hand and seal of office, this day of 1772.

Sealed, &c.

G. H. L. S.

K. B.

Trinity Term, &c.

London, to wit, C. D. was summoned to answer *Declaration* A. B. of a plea, wherefore he took the goods and chattels of the said A. B. and them unjustly detained against gages and pledges until, &c. And whereupon the said A. B. by R. P. his attorney, complains that the said C. D. on the day of *(any day after distress made, and before suit commenced)* in the 12th year of the reign of our Sovereign Lord George the Third, now King of Great Britain, &c. at the parish of St. Mary le Bow, in the ward of Cheap, at London aforesaid, to wit, in a certain place there called *Grubstreet*, took the goods and chattels following, to wit, *(here insert the things taken, if known particularly; if not, a sufficient quantity of different sorts of household furniture to cover same)* belonging to him the said

said *A. B.* and unjustly detained the said things so taken against sureties and pledges, until, &c. WHEREBY the said *A. B.* says, that he is prejudiced, and hath damage to the value of 50 l. And therefore he brings suit, &c.

Plea or
avowry for
rent.

And the said *C. D.* by *M. T.* his attorney, comes and defends the force and injury when, &c. and well avows the taking the said goods and chattels in the said place in which, &c. and justly, &c. because he says, that the same place in which the taking the said goods and chattels is supposed to be done, contains, and at the same time in which the taking the said goods and chattels is supposed to be done, contained a certain messuage or tenement, with the appurtenances, in the said street called *Grubstreet*, in the parish of *St. Mary le Bow*, in the ward of *Cheap*, in the city of *London* aforesaid, of which said messuage or tenement, with the appurtenances, before the said time in which, &c. one *E. F.* was seized in his demesne as of fee; and being so seized, the said *E. F.* before the said time in which, &c. to wit, on the day of in year of the reign of our sovereign Lord *George* the Third, at *London* aforesaid, in the parish of *St. Mary le Bow*, in the ward of *Cheap* aforesaid, demised the said messuage or tenement, with the appurtenances, to the said *C. D.* TO HOLD to him the said *C. D.* and his assigns, from the 24th day of *June* then last past, before the date of the said lease, for the term of seven years from thence next ensuing, and fully to be compleat and ended, by virtue of which said demise the said *C. D.* was possessed of the said messuage or tenement, with the appurtenances aforesaid; and being so thereof possessed, he the said *C. D.* before the said time in which, &c. to wit, on the day of in the said year of the reign of our sovereign Lord

Lord George the Third, demised the said messuage or tenement, with the appurtenances, to the said *A. B.* from the 25th day of *December* then next following, for the term of one year thence next ensuing, and fully to be compleat and ended: Yielding, therefore, for the said year to the said *C. D.* or his assigns, the rent of 20 l. of lawful money, &c. at the four usual times of payment of rent in the year, *to wit*, on the 25th day of *March*, the 24th day of *June*, the 29th day of *September*, and the 25th day of *December*, by even and equal portions: By virtue of which said demise, the said *A. B.* entered into the said messuage or tenement, with the appurtenances, and was possessed thereof and occupied the said messuage or tenement, with the appurtenances, for the space of three quarters of a year; and because the sum of 15 l. of the said rent, after the demise so made for the time aforesaid, on the 29th day of *September* last past, and before the taking the said goods and chattels, was in arrear and unpaid to the said *C. D.* the said *C. D.* well avows the taking the said goods and chattels in the said place in which, &c. and justly, &c. for the said 15 l. being in arrear to the said *C. D.* in form aforesaid, as in the said messuage or tenement, with the appurtenances, bound and liable to the distress of the said *C. D.* in form aforesaid; and this he is ready to verify: Wherefore he prays judgment, and a return of the said goods and chattels to be adjudged to him, &c.

And the said *A. B.* says, That the said *C. D.* Replication
for the reasons before alledged, ought not to
well avow the taking the goods and chattels in
the place in which, &c. because he says, That
the said 15 l. or any part thereof of the rent
aforesaid,

to avowry
that there is
no rent in
arrear.

Issue and
award of
venire.

aforesaid, at the said time in which, &c. was not in arrear or unpaid to the said C. D. as the said C. D. in his said avowry has above alleged; and this he prays may be inquired of by the country: And the said C. D. does so likewise. THEREFORE it is commanded to the sheriff, that he cause to come before our Lord the King, from, &c. (*the return of venire*) twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. the same day is given to the said parties, &c.

Note.

The above declaration, plea, replication, and award of *venire*, compleat issue in replevin, only adding thereto memorandum to declaration, and plea, if necessary, as in a common action.

In making up record in replevin, you add *placita's* as in a common action; the *jurata* the same, *mutatis mutandis*.

If judgment goes by default, or plaintiff in replevin is nonsuited, you must execute a writ of inquiry.

Form of writ
of inquiry in
replevin,
where judgment for defendant on
nonsuit.

GEORGE the Third, &c. To the sheriffs of London, Greeting: WHEREAS C. D. was summoned, &c. (*as in declaration and plea, or avowry, to the end thereof*) and the same day was given to the said C. &c. on which day came the said C. into our court before us at *Westminster*, and the said A. although solemnly called, did not come, nor further prosecute his writ aforesaid: THEREFORE it is considered that the said A. take nothing by his writ aforesaid, but be in mercy for his false claim thereof; and that the said C. do go thereof without day, &c. THEREFORE we command you, that according to the form of the statute in such case lately made and provided, by the oath of twelve good

good and lawful men of your county, you diligently inquire how much of the yearly rent aforesaid, at the said time of taking and distraining of the goods and chattels aforesaid, was in arrear and unpaid; and how much the goods and chattels aforesaid, so as aforesaid taken and distrained, were worth, according to the true value of the same, and the inquisition, which, &c. send to us from (*the return of inquiry*) under your seals, and the seals of those by whose oath you shall take that inquisition; together with this writ. WITNESS, *William Lord Mansfield, at Westminster, &c.*

Lee.

As *replevin* is *vicontiel* and determinable in the inferior court where the suitors are judges both of the law and the fact, the law hath appointed two writs to remove such causes out of inferior courts to superior, *viz.* The *pone* and *recordari*. Observations.

The *pone* is used when the proceedings are by writ of *replevin*, for that writ gives the superior court authority to proceed in such suit or plaint, whether the proceedings below are recorded or not, as the superior court wants no record from below, when they have the King's writ with them.

The *recordari* is a writ to record the proceedings, and when recorded, to return same into the King's Bench, or Common Pleas, as the case may be. It gives inferior court authority to record proceedings that were not of record before; and if *replevin* was by plaint, it must be removed by *recordari*, because the court must have their authority by proceedings returned to them of record.

A plaintiff

A plaintiff in *replevin* may remove writ of *replevin* or *plaint* out of an inferior court, either by *pone* or *recordari*, without shewing any cause for such removal, as it is an act in his own delay; but a defendant in *replevin* cannot, without shewing a sufficient cause, which must appear upon record.

There are several causes of removal at common law; when removed, the cause is inserted in writ after the *teste*.

If *plaint* be removed by defendant by *pone* at the day in bank, the plaintiff shall be demanded under peril of a nonsuit; and if he makes default, a return is to be awarded to the said writ, but no process against him. If plaintiff appears, and defendant makes default, a *distringas* shall issue against him, and on same being returned *nulla bona*, then a *capias* and process of outlawry. If *plaint* be removed by plaintiff by *pone* or *recordari*, if he makes default, he shall be nonsuited, but if defendant makes default, then shall issue against him a *pone per vadios*, and so process of outlawry. *Gilb. L. R.*

Writ of
pone.

GEORGE the Third, &c. To the sheriffs of London, Greeting: Put by upon the petition of the petitioner, on *(the return)* wheresoever we shall then be in England, the *plaint* which is in your county, by our writ between *A.* and *C.* of the goods and chattels of the said *A.* taken and unjustly detained, as is said, and summons by good summoners, the aforesaid *C.* that he be then there to answer the aforesaid *A.* hereof; and have there the summoners and this writ. Witness, &c.

Writ of re-
cordari.

GEORGE the Third, &c. To the sheriffs of London, Greeting: WE command you, that you cause to be recorded in your full county, the *plaint* which is in the same county, without
our

our writ, between *A.* and *C.* of the goods and chattels of the said *A.* taken and unjustly detained, as is said, and have the record before our justices at *Westminster*, (the return, where-soever, &c. under your seal, and the seals of four lawful suitors of the same county, with those who were present at the recording it, and fix the same day to the parties that they were there and proceeded in that plaint according to justice, and have there the names of the said four suitors, and this writ). Witness, &c. (Let this writ be executed, if the aforesaid *A.* petitions for it, and otherwise not.)

These writs issue out of Chancery, and are made out by the proper curfitor of the county, on leaving him a *precipe* for that purpose.

If plaintiff in *replevin* hath judgment on ver- Of judg-
dict, the jury assesses the damages as in a common ments in re-
action; if on a demurrer, he must sign an inter-plevin.
locutory judgment, and execute an inquiry before he can sign final judgment, or take out execution.

If the avowant or defendant hath judgment on verdict, damages are assessed as aforesaid; if on demurrer, or on *non pros*, an inquiry must be executed to obtain such judgment.

If in *replevin* plaintiff is nonsuited, he cannot have a new *replevin*, but must be relieved by the writ of *second deliverance*.

If plaintiff does not prevail in this writ, the *retorno habendo* is awarded for the avowant irreplevisable; that is, that avowant shall detain and keep the things taken, till the rent, or other duty for which they were taken, is paid; nor shall plaintiff ever again disturb defendant's possession by *replevin*, or writ of *second deliverance*, though if plaintiff tenders the rent, defendant must restore the goods, &c. or plaintiff may recover same by action of *detinue*.

E e

The

The Modern Practice of the

The writ of *second deliverance* is a *superfedeas* in law to the sheriff against the writ of *retorno habendo*, and to prevent his executing same. If it comes to him after return made, it is in the nature of a new *replevin*.

If defendant in *replevin* cannot get the goods, &c. of plaintiff on the writ of *retorno habendo*, and sheriff returns same *elongata*, defendant must sue out *scire facias* to summons the bail, which brings them into court, to shew cause why defendant should not have a return of their goods, &c. and if no cause shewn by them, he hath a writ to have return of their goods, &c. instead of plaintiff's; and if their goods, &c. prove insufficient, and sheriff returns a *nihil* on this writ, defendant may have a *scire facias* against the goods, &c. of the sheriff.

The defendant hath another remedy against plaintiff, where sheriff returns *elongata* on the writ *de retorno habendo*, viz. a *capias in withernam* against plaintiff's goods, &c.

By stat. 17 Car. 2. it is enacted, That where a plaintiff in *replevin* shall be nonsuited before issue joined, or judgment on demurrer for the avowant in any court of record, defendant making a suggestion thereof in nature of an avowry for such rent, &c. that court may be ascertained of the cause of the distress; court on his prayer shall award a writ, &c. to inquire of the sum in arrear at the time of making the distress, and the value of the goods, &c. taken, and on return of the inquisition, the defendant shall have judgment to recover against plaintiff the arrears of rent, in case the goods, &c. taken amount to same, or so much as the value of the said goods, &c. amount to, and full costs of suit, and shall have execution thereon by *fieri facias*, or *elegit*, or otherwise.

Recaption.

The writ of *recaption* lies where defendant distrains again on plaintiff for the same rent, and

and if he is convicted thereof, he shall be fined to the King.

On the writ of recaption, defendant cannot avow as in *replevin*, because avowry is to have return of the pledges; but defendant must justify as in trespass, and unless he can support such second taking, he will be deemed a trespasser.

On the recaption, the tenant in his declaration must aver that the second distress was taken for the same cause as the first, or he fails in making out his title to the said writ, and consequently cannot punish the landlord for such second distress.

GEORGE the Third, &c. To the sheriffs of London, Greeting: WHEREAS *A. B.* lately in our court before us at *Westminster*, was summoned to answer to *C. D.* in an action, wherefore he took (*the goods, &c. taken*) the goods, &c. of him the said *C. D.* and unjustly detained them against sureties and pledges, &c. as he alleged: And the said *C.* afterwards made default in our said court before us, wherefore it was considered in our same court before us, that he and his pledges for prosecuting should be amerced, and that the said *A.* might depart the court without a day, and should have a return of the goods, &c. aforesaid: THEREFORE we command you, that without delay you return the said goods, &c. to the said *A.* and you shall not deliver them at the complaint of the said *C.* without our writ, which shall expressly mention the said judgment, and in what manner you execute this writ, you shall make appear to us, (*the return*) wheresoever, &c. and have you there this writ. Witness, &c. *William Lord Mansfield*, at *Westminster*, &c.

Writ of re-
torno habendo, against
plaintiff by
default.

Writ of second deliverance.

GEORGE the Third, &c. To the sheriffs of London, Greeting: If *C. D.* shall give you security that he will prosecute his claim, and also return the goods, &c. which in our court before us were lately adjudged to *A. B.* through the default of the said *C.* we command you, That if by means of our writ *de retorno habendo*, lately directed to you for that purpose, you have made a return of the said goods, &c. to the said *C. D.* then do you cause them to be delivered to the said *C. D.* and by sureties and safe pledges compel the said *A.* that he be before us on (*the return*) wheresoever, &c. to answer to the said *C. D.* for taking and unjustly detaining the said goods, &c. aforesaid; and have you there the names of the pledges and this writ. Witness, *William Lord Mansfield*, &c.

Sheriff's return.

BY virtue of this writ to me directed, I have caused to be delivered to the within-named *C. D.* his goods, &c. within-mentioned, as I am within commanded to do. The pledges within-named are *John Doe* and *Richard Roe*.

The ANSWER of

John Wikes, Esq;
and
Frederick Bull, Esq; } Sheriffs.

Writ of capias in wisthernam.

GEORGE the Third, &c. To the sheriff of *Essex*, Greeting: WHEREAS we lately commanded you by our writ, THAT WHEREAS *C. D.* had been attached by our writ of second deliverance to appear in our court before us, to answer *A. B.* in an action, wherefore he took the cattle of the said *A.* and unjustly detained them against sureties and pledges: And the said *A. B.* should depart hence without a day, and that

that the said *A. B.* and his pledges for prosecuting should be amerced: And that the said *C. D.* should have a return of the goods, &c. aforesaid irreplegiabie, and that you without delay should make a return of those goods, &c. to the said *C. D.* to be detained by him irreplegiabie, and in what manner you should execute that writ, you should make known to us, (*the return*) wheresoever, &c. and you at that day returned to us, that the goods, &c. aforesaid, were eloined by the said *A. B.* to places unknown to you, so that you could not return or deliver those goods, &c. to the said *C. D.* as you was commanded by the said writ: THEREFORE we command you, that you take so many goods, &c. of the said *A. B.* to the value of the goods, &c. aforesaid, before taken by the said *A. B.* in *withernam*, and deliver them to the said *C. D.* to be kept by him irreplegiabie, until you can make a return of those goods, &c. before taken to the said *C. D.* and in what manner you shall execute this our mandate, do you make appear to us, on (*the return*) wheresoever, &c. and that you cause further to be done therein what of right, and according to the laws and customs of this our kingdom of *Great Britain*, we shall see meet to be done. WE also command you, that if the said *C. D.* shall make you secure of prosecuting his claim, and returning the chattels aforesaid, if a return thereof should be adjudged, then do you compel the said *A. B.* by sureties and safe pledges, that he be before us (*such a return*) wheresoever, &c. to answer as well to us for the contempt, as to the said *C. D.* for his damages and injury done him in this case; and have you there this writ. Witnesses, *William Lord Mansfield*, at *Westminster*, &c.

Practical
remarks.

If defendant be without addition in plaint, he can have none in *recordari*, yet he may be outlawed. 2 H. 5.

Plaintiff in *replevin* may declare without rule from defendant to force him so to do. If defendant does not appear, the way to compel appearance is by attachment.

On cause being removed out of county court, plaintiff must declare *de novo*. C. J. Gilb. Law of Replevins, p. 147.

The general issue in *replevin* is *non cepit*, but the caption and detention only is in issue by this plea, and not the property. C. J. Gilb. Law of Replevins.

If *pone* is taken out by defendant with a summons, plaintiff is demandable on peril of a nonsuit, and so he is where a day is given defendant. F. N. B. et Stat. 21. H. 6.

Capias lies against defendant on his default to appear on a *pone* brought by plaintiff in *replevin* by plaint, but not on a *justicies*. Stat. 21. H. 6.

A record can only be moved out of a court of record by *habeas cum causa*, or *certiorari*. Stat. 9 H. 6.

Scire facias the proper process to bring in the pledges in *replevin*, need not be returned to intitle party to a *capias in withernam*. 5 H. 5. Fitz. Abr. title process, p. 115.

Sheriff may break open a house to execute a *replevin*, if denied entrance. 2 Inst. 193. 1 West. c. 17.

If plaintiff be nonsuited, or a verdict against him, the writ of *retorno habendo* may be brought by defendant; and if sheriff levies goods on a *withernam*, and won't deliver same to defendant, an action lies against him. Fitz. Abr. title Gage Deliv. p. 8.

A second

A second deliverance was denied in the case of a nonsuit for rent. *Ventr.* 64. *Mich.* 6. *Geo.* 2.

Replevin is not an action or plaint within stat. 8 & 9 *Will.* 3. 3 *Bur.* 1286.

Where in *replevin*, the place is material. *Strange* 507.

No *replevin* of goods taken upon a conviction. *Strange* 1084.

EJECTMENT

Is an action brought by the lessee of a term of years to recover such term, when he is ousted thereof. It is now generally used to recover the possession of lands, and supplies the place of many real actions. Observations.

The method of bringing this action is to feign a lease and an ejector, and to draw a declaration against such feigned ejector; a copy of which declaration must be delivered to the tenant or tenants in possession of the premises intended to be recovered, with a notice at bottom thereof for him or them to appear and defend his or their title to such premises; or else that the ejector will suffer judgment to be signed against him by default, whereby the tenant in possession will be turned out of the premises he holds.

On such declaration being delivered in manner aforesaid, it is the duty of the tenant or landlord, if he means to defend his possession or title to the said premises, to enter into a rule of court to become defendant to such action in ejectment, in the room of the casual ejector, or nominal defendant, and to confess the lease, entry,

entry, and ouster at the trial thereof, and insist on his title only.

Stat. 4 Geo.
2.

The service of a declaration in ejectment before this statute, might have been on the tenant himself, or his wife, &c. but now such service is not good, unless tenant himself acknowledges the receipt after it is delivered to plaintiff's attorney, or the person who delivers same must make oath that he delivered to tenant in possession, or that the tenant in possession acknowledges the receipt of a true copy of the annexed declaration, with the notice thereon, which deponent did then read to the said tenant, and acquainted him with the contents thereof. The affidavit must be positive, that the person that declaration was delivered to was tenant in possession, or that he acknowledged himself so to be.

On the ground of this affidavit, plaintiff moves for a rule for judgment against the casual ejector, which is granted, and judgment in consequence, unless the real defendant in due time enters into the common rule. The notice to the declaration, if the premises lie in *London* or *Middlesex*, must be made to appear the first day of the subsequent term, and must be delivered before the escoin day of such term; for if made generally, defendant will have the whole term to appear in. If the premises in question lie in any other city or county than *London* or *Middlesex*, you make the notice to appear the next term generally.

When in
any other
city or coun-
ty than Lon-
don or Mid-
dlesex,

If premises lie in any other city or county than *London* or *Middlesex*, tho' declaration delivered before the escoin day of *Easter* or *Michaelmas* term, yet tenant has four days after the end of the next issuable term, *Hilary* or *Trinity*, to appear; and if in a county where assizes but once a year, tenant has four days after the end of the term next preceding the assizes to appear.

If

If houses or lands, for which ejectment brought, are empty, so that declaration cannot be delivered, or an affidavit made, so as to enable court to grant judgment against the casual ejector, plaintiff must seal a lease on the premises, and give rules to plead; and when out, he must make an affidavit of the whole matter, on which court grants judgment against the casual ejector.

If a tenant in possession keeps his door shut, so that he cannot be served with declaration in ejectment, on making this matter appear to court by affidavit, they will grant judgment against the casual ejector. *Nisi*, &c.

When a corporation is lessor of the plaintiff, they must give a letter of attorney to some person to enter and seal a lease on the land, which lease must try their title, and then their attorney may proceed in the common method.

Of what things ejectment will or will not lie, and of the manner of describing same in declaration.

An ejectment lies of a stable, as also of an orchard, and of a college. *Cro. El.* 854. Of a garden. *1 Lev.* 58. It lies of a boillery of salt. *1 Lev.* 114. It lies *pro stagno*. *Yelv.* 143. *Et pro gurgite*. *1 Inst.* 5. Of a coal mine. *Cro Jac.* 150. For a beast-gate. *Andr.* 106. *Pro prima tonsura*. *Cro. Car.* 262. *Pro herbagio*. *Hard.* 401. *Pro pastura centum ovium*. *Dalif.* 95. For tithes. *Andr.* 107. *Pro restoria*. *Latch.* 62. *Pro Sapella*, by the name of a messuage. *Salk.* 256. Of a hop-yard. *Palm.* 337. Of a house. *Cro. Jac.* 654. Of a chamber in the second story of such a house. *3 Leon.* 210. Of a close called *D.* containing three

The Modern Practice of the

three acres of land. *Cro. Jac.* 435. Of twenty acres of furze and heath. *Cro. Car.* 179. *Pro quatuor molendinis pro decem acris pisarum.* *Cro. Eliz.* 339. For common of pasture. 1 *Strange* 54. For mountains in Ireland. 1 *Strange* 71. *De paria domus.* 1 *Strange* 695. For an alder carr in *Norfolk*. 2 *Strange* 1063. Not for a tenement. 2 *Strange* 834.

An ejectment lies not *de pannagio*, for *pannagium* is but the privilege of taking pannage. 1 *Lev.* 213. It lies not of a rent or common appendant. *Cro. Car.* 202. Nor *de quodam rivulo*, &c. *aquæ cursu.* *Yelv.* 143. Nor *de piscaria* in such a river. *Cro. Car.* 492. Nor *de crofto.* *Styles* 30. Nor of a kitchen. *Noy* 109. Nor of a close. *Godb.* 53. Nor of arable nor pasture land, without shewing how much of one, and how much of the other. *Salk.* 254. Nor *pro virgata terra.* *Cro. Eliz.* 339.

Ejectment in Ireland *de castro villa & terris* in *Kilbrough*, without expressing the number and certainty of acres, is not sufficient. *Yelv.* 118.

It will not lie of the fourth part of a meadow, without shewing the number of acres the meadow contains. 1 *Lev.* 213.

Ejectment for five closes of land, arable and pasture, called long furlongs, containing ten acres, held ill. *Cro. Car.* 573.

Ejectment in *Durham de mineris carbonum*, no saying how many proving the custom of the place to be so, held good. *Salk.* 255.

An ejectment *de uno messuagio sive tenemento* naught. *Cro. Eliz.* 186.

Ejectment of a messuage or tenement called the *Black Swan*, was held good. 4 *Mod.* 136.

Ejectment for a messuage or burgage, is good. *Hard.* 173.

An

An ejectment for 100 acres of waste, or *pro centum acris montis*, naught for incertainty. *Palm.* 100.

For 100 acres of bogg in *Ireland*, good. *Salk.* 255.

For a house, ten acres of land, and twenty acres of meadow, by the name of a house and ten acres of meadow, naught for incertainty. *4 Mod.* 143.

Ejectment for a manor should describe the quantity and species of land contained therein. *Lit. Rep.* 301.

For ten acres of wood, and ten acres of under-wood, good. *2 Rol. Rep.* 482.

An ejectment for a certain place called the vestry in *D.* good. *3 Lev.* 96.

The general maxim in laying houses or land Note. in ejectment, is, that they must be specified in such a manner in declaration, that sheriff may be able to deliver possession of same on judgment with certainty.

THIS INDENTURE, made the 20th day of May, in the 10th year of the reign of our sovereign Lord *George* the Third, by the grace of God, King of *Great Britain, France,* and *Ireland*, defender of the faith, &c. and in the year of our Lord 1770, BETWEEN *A. B.* of, &c. of the one part, and *C. D.* of, &c. of the other part, WITNESSETH, That he the said *A. B.* for divers good causes and considerations him thereunto moving, hath demised, granted, and to farm letten; and by these presents, doth demise, grant, and to farm let unto the said *C. D.* ALL that messuage or tenement, com-called or known by the name or sign of the *Bull Head*, situate, lying, and being in the city of *London*, and late in the possession of one *E. F.* To have and to hold the said messuage or tenement, and premises, with the appurtenances, from the date of these presents, for and until

Lease in
ejectment
where pre-
misses unin-
habitated, to
recover pos-
session.

The Modern Practice of the

until the full end and term of five years from thence next ensuing, and fully to be complete and ended: PROVIDED ALWAYS, *and upon condition*, That if the said *A. B.* his executors or administrators, shall, at any time after the 30th day of this present *May*, tender to the said *C. D.* his executors or administrators one shilling, then this present indenture, and every thing therein contained, shall be void and of none effect, (*any thing herein contained to the contrary in anywise notwithstanding*). IN WITNESS, &c.

Directions
for filling up
declaration
in eject-
ment.

As declaration is usually delivered in vacation to appear in subsequent term, title must be of preceding term. The demise must be laid any day after rent, &c. due, and before declaration delivered, except a *Sunday*; notice to appear must be on the first day of subsequent term.

Michaelmas Term, 12th George the Third.

Lu.

Declaration
by bill.

Middlesex, to wit, *A. B.* complains of *C. D.* being in the custody of the marshal of the *Marshalsea* of our Sovereign Lord the King, before the King himself, for that WHEREAS *E. F.* on the day of *May*, in the 10th year of the reign of our Sovereign Lord *George the Third*, by the grace of God King of *Great Britain*, and so forth, at *Westminster*, in the county of *Middlesex*, had demised, granted, and to farm-let to the said *A.* five messuages, &c. with the appurtenances situate, lying, and being in the parish of *St. Clement Danes* in the said county of *Middlesex*, TO HAVE AND TO HOLD the said tenements, with the appurtenances, to the said *A. B.* and his assigns, from the day of *March* then last past, to the full end and term of five years from thence next ensuing, and fully to be complete and ended: By virtue of which said demise, he the said *A.* entered

tered into the said tenements with the appurtenances, and was thereof possessed, until the said C. afterwards, (*that is to say*) on the same 10th day of *May*, in the 10th year aforesaid, with force and arms entered into the said tenements, with the appurtenances, in and upon the possession of the said A. and ejected, drove out, and removed the said A. from his said farm, during his said term not yet expired, (*and the said A. being so ejected, drove out, and removed*) the said C. hitherto hath withheld from him, and still doth withhold the possession thereof, and then and there brought other injuries upon him against the peace of our said Sovereign Lord the King, and to the damage of the said A. 30l. and therefore he brings his suit, &c.

Michaelmas Term, 12th George the Third.

Middlesex, to wit, *A. B.* late of the parish of *St. Clement Danes*, in the county aforesaid, by original Declaration taylor, was attached to answer *C. D.* in an action, wherefore he the said *A. B.* entered into a messuage or tenement, and garden, with the appurtenances situate, lying, and being in the said parish of *St. Clement Danes*, in the county aforesaid, which one *E. T.* demised to the said C. for a term which is not yet expired, and ejected him from his said farm, and did other wrongs to him, to the great damage of the said C. and against the peace of our Sovereign Lord the King: And whereupon the said C. by *R. R.* his attorney, complains, **THAT WHEREAS** the said *E. T.* on the 10th day of *May*, in the 10th year of the reign of his present Majesty, at *Westminster*, in the county aforesaid, had demised to the said C. the said tenement, with the appurtenances for him the said C. and his assigns, **TO HAVE AND TO HOLD** the said

F f tenements,

tenements, with the appurtenances, from the 5th day of *March* then last past, to the full end and term of five years then next following, and fully to be complete and ended: By virtue of which said demise, the said C. entered into the said tenements, with the appurtenances, and was possessed thereof; and being so possessed thereof, the said A. afterwards (*that is to say*) on the same 10th day of *May*, in the said 10th year, with force and arms entered into the said tenements, with the appurtenances, which the said E. T. demised to the said C. in manner as aforesaid, for a term which is not yet expired and ejected, the said C. out of his said farm, and did him other wrongs, to the great damage of the said C. and against the peace of our said Sovereign Lord the King, whereby the said C. declares he is injured, and hath damage to the value of 30*l.* and therefore he brings his suit, &c.

To Mr. J. F. (*The tenant in possession*)

Notice to tenant in possession at the bottom of these declarations,

I am informed that you are in possession, or claim, title to the premises mentioned in this declaration of ejectment, or to some part thereof, and I being sued in this action as a casual ejector, and having no claim or title to the same, do advise you to appear the first day of *Michaelmas Term* next, in his Majesty's court of King's Bench, at *Westminster*, by some attorney of that court, and then and there by rule of the same court, to cause yourself to be made defendant in my stead, otherwise I shall suffer judgment therein to be entered against me, and you will be turned out of possession. I am

Your loving Friend,

Richard Letgove.

June, 1772.

You

You may buy printed copies of these declarations on treble penny stamped paper, at any of the law stationers; they are indorsed for delivery in same manner as another declaration.

As you must bring separate actions for as many different premises as there are tenants, each declaration to deliver must be on treble penny, agreeable to the copy thereof you keep by you, on treble penny, in order to make an affidavit of the service of same, to obtain rule for judgment.

If premises are in *London or Middlesex*, and When notice in declaration is to appear the first day of term, or within the first four days of the term, you may move any time within the four days, and then tenant has but four days inclusive to appear after motion; if moved late in term, tenant has two or three days to appear, but if not moved before the four last days of term, he has until two days before the essoign day of the subsequent term. If notice on declaration is to appear, generally tenant has the whole term to appear in.

When you move for rule for judgment, you annex affidavit to a copy of declaration on treble penny stamp, and give it counsel with 10s. 6d. to move same. It is a motion of course. Mr. Cooper files affidavit and declaration on motion for rule for judgment, so that you must take care to have another copy on stamp to keep by you; or if judgment should go against the casual ejector for want of tenant's entering into rule, you will be forced to have office copy declaration from Mr. Cooper, to enable you to sign judgment.

THURSDAY next after, &c.

Rule for
judgment
against the
casual ejec-
tor.

On the demise,
F.
against
C.

UNLESS the tenant in
possession of the premises
in question shall appear
and plead to issue on
Tuesday next after, &c.
(time tenant is to appear in)
let judgment be entered for
the plaintiff against the now
defendant C. by default
upon the motion of Mr.
Gunning.

BY THE COURT.

Note.

If plaintiff does not move for judgment same
term tenant had notice to appear, the court
will not grant such rule. *Salk. 257.*

Rule by con-
sent entered
into by plain-
tiff and de-
fendant.

MICHAELMAS TERM, in the 10th year of
the reign of King *George* the 'Third.

A. on the
demise of F.
against C.
A messuage
or tenement
and garden,
with the ap-
purtenances,
situate in the
parish of St.
Clement
Danes, in
the county
of Middle-
sex.

IT IS ORDERED by the consent of the at-
tornies of both parties, that *J. F.* be made de-
fendant in the stead of the now defendant *C. D.*
and do appear forthwith at the suit of the plain-
tiff, and file common bail, and receive a decla-
ration in an action of trespass and ejectment for
the premises in question in this cause, and forth-
with plead thereto *Not guilty*; and upon the trial
of the issue, confess lease, entry, and ouster,
and insist upon the title only, otherwise let
judgment be entered for the plaintiff against the
now defendant *C. D.* by default; and if upon
the trial of the issue, the said *J. F.* shall not
confess lease, entry, and ouster, whereby the
plaintiff shall not be able further to prosecute
his bill against *J. F.* then no costs shall be al-
lowed for not further prosecuting the same; but
the

the said *J. F.* shall pay costs to the plaintiff in that case to be taxed. AND IT IS FURTHER ORDERED, That if upon the trial of the said issue, a verdict shall be given for the said *J. F.* or it shall happen that the plaintiff shall not further prosecute his said bill for any other cause than for not confessing lease, entry, and ouster, then the lessor of the plaintiff shall pay to the said *J. F.* his costs in that behalf to be adjudged.

BY THE COURT.

R. R. *for the lessor of the plaintiff* }
P. P. *for the defendant* }

Get a blank consent rule at a law stationers; How defend-
they are not stamped; fill it up, and make de-
nant, instead of the nominal defendant, the de-
fendant therein. Write in the margin of such plead to ac-
rule the premisses mentioned in declaration. tion in eject-
It must be signed at bottom with the tenant's ment by
attorney's name, leaving room for the plaintiff's bill.
attorney's name over it. In gross *general issue*
Not guilty, with the defendant's name, on a
treble penny piece of stamped paper, and annex
same to the back of rule, and leave it at one of
the judge's chambers of court where action
brought; pay judge's clerk in term 1 s. in va-
cation 2 s.

By original, you must in consent rule strike By original.
out the words (*and file common bail*); and instead
of (*his bill therein*) insert (*his writ*), and instead
of filing common bail, you must enter an ap-
pearance with Mr. Adams.

If defendant enters into the common rule to Note:
confess, &c. for so much of the tenements as
are in his possession, defendant's attorney must
forthwith give plaintiff's attorney notice in writ-
ing of the tenements so in his possession. *Trin.*
15 Car. 2.

K. B.

A. on the demise of F.
against
C.

S I R,

Notice of the
premisses de-
fendant de-
fends for.

Take notice that I defend title for a messuage
or tenement, and garden, with the appurtenan-
ces, situate in the parish of *St. Clement Danes*,
in the county of *Middlesex*, now in the posses-
sion of the said *J. F.* or his under-tenant.
Dated the _____ day of _____ 1772.

To Mr. R. R. }
plaintiff's attorney,
These,

Your's, &c. }
P. P.
defendant's attorney.

Note.

If a person claims title to premisses which he
would defend, and is not in possession of the
same, he must move court on affidavit of the
fact to be made defendant, instead of the nomi-
nal defendant. This must be with the consent
of the tenant in possession, unless such person is
landlord thereof.

Steps to be
taken by
plaintiff to
draw up
consent rule
in order to
come to is-
sue.

When rule for judgment is out, you search
at the four judge's chambers of court cause is
brought in to see, if defendant has pleaded. If
he hath pleaded, you take away rule and plea;
sign your name as plaintiff's attorney at bottom
of rule; carry same to Mr. *Cooper*, who keeps
rule, and draws you up another consent rule;
pay him for same 6s. This rule you make a
copy of, and annex such copy to issue when you
deliver same to defendant's attorney.

Plea not
guilty.

AND the said *J. F.* by *P. P.* his attorney,
comes and defends the force and injury, when,
&c. and says that he is not guilty of the trespass
and ejectment aforesaid, as the said *John Hold-
fast* above complains against him, and of this he
puts himself on the country.

Issue and record in ejectment, when proceed- Issue and re-
ings are by *bill* or *original*, are the same as in cord in eject-
a common action *mutatis mutandis*, only using ment by bill
a written form instead of the common printed or original.
form for the issue in both cases.

Search at all the judge's chambers of court How to sign
action is brought in, to see if tenant hath left judgment a-
plea and rule in the cause; if none left, draw gainst the
up rule for judgment with Mr. Cooper; pay for casual eiec-
same 5s. Make *incipitur* of declaration on a tor for want
sheet of double 2s. 6d. stamped paper, and also of plea.
on a K. B. roll; carry them with declara-
tion and rule to Mr. Caley, clerk of the
judgments, who signs judgment; pay for same
3s. 6d.; this done, you may make out *writ*
of possession.

AND the said E. F. by P. P. his attorney, A postea on
comes and defends the force and injury, when, verdict for
Ec. and says nothing in bar or preclusion of the the plaintiff,
aforesaid action of the said John Holdfast, but against the
made default, whereby the said John Holdfast casual eiec-
remains therein undefended, Ec. tor, for not
THEREFORE it is considered that the said John Hold- confessing
fast do recover against the said E. F. his term lease, entry,
aforesaid yet to come, of, and in the said tene- and ouster,
ments, with the appurtenances, AND ALSO
his damages, by occasion of the trespass and
ejectment aforesaid; and thereupon the said
John Holdfast freely here in court, remits to the
said E. F. as well all such damages, costs, and
charges as may be adjudged to the said John
Holdfast in this behalf, as all judgments and
executions for the said damages, costs, and
charges: THEREFORE let the said E. F. be
acquitted of the said damages, costs, and
charges, and the said John Holdfast prays the
writ of our said Lord the King to be directed to
the sheriff of the county of *Middlesex*, to cause
him

The Modern Practice of the

him to have possession of his said term yet to come of and in the said tenements, with the appurtenances, and it is granted to him returnable before our Lord the King at *Westminster*, on *(the return you make your writ of possession)*. The same day is given to the said *John Holdfast* there, &c.

F The above *possession* is not stamped; it is entered with *Mr. Walter*; pay for entering same 6d. You give rule for judgment thereon as in a common case; when out, tax costs with *Mr. Benton* on the consent rule; make copy thereof, and serve on defendant, and demand the costs taxed; if he refuses payment on affidavit and motion, court will grant an attachment for his contempt, which cannot be purged till he hath paid the costs. If defendant keeps out of the way, to prevent your serving rule, and demanding the costs on affidavit and motion, court will make an order, that service and demand on some person in the house or place where defendant resides, shall be sufficient; and if not complied with on affidavit of the fact and motion, court will grant an attachment against defendant.

Note.

If verdict given for the defendant or plaintiff *unsuited*, for any other cause than defendant's not confessing, &c. defendant must get *possession* stamped, and tax costs thereon as in another action. He must sue out *ca. sa.* against plaintiff, and on shewing the writ under seal to plaintiff's lessor, and serving him with a copy of consent rule, and demanding costs; if he does not pay same, court on motion will grant an attachment against him.

Judgment in AND the said *E. F.* by *P. P.* his attorney, ejection by comes and defends the force and injury, when, non informatus, &c. and upon this the said *John Holdfast* prays that the

the said *E. F.* may answer his said declaration, upon which the said attorney of the said *E. F.* says, That he is not informed by the said *E. F.* of any answer to be given for the said *E. F.* to the said *John Holdfast* in the said plaint; and he says not any thing else thereupon in bar or preclusion of the said action of the said *John Holdfast*, by which the said *John Holdfast* remains undefended upon that occasion against the said *E. F.* for which it is considered that the said *John Holdfast* recover against the said *E. F.* the possession of his said term yet to come of and in the said tenements, with the appurtenances, and his damages by occasion of the said trespass and ejectment; but because it is unknown what damages the said *John Holdfast* has sustained by occasion of the said trespass and ejectment, it is commanded to the sheriff, that by the oath of twelve good and lawful men of his bailiwick, he diligently inquire what damages the said *John Holdfast* has sustained as well by occasion of the said trespass and ejectment, as for his costs and charges by him about his suit in this behalf expended; and that the inquisition which, &c. the sheriff do make appear to our Lord the, &c. on (*the return of inquiry*) under his seal, &c. and the seals, &c. The same day is given to the said *John Holdfast*, &c. and upon this the said *John Holdfast* prays the writ of our Lord the King to be directed to the sheriff of the county aforesaid, to cause him to have possession of the said term yet to come of and in the said tenements, with the appurtenances; and it is granted to him returnable before our Lord the King, at *Westminster*, on (*return of w. it of possession*).

MIDDLESEX, to wit, *C. D.* late of *London*, Declaration-taylor, was attached to answer to *A. B.* of *a* by original in ejectment plea, for the mesne profits.

plea, wherefore with force and arms he broke and entered into five messuages, with the appurtenances, at *Westminster*, in the county aforesaid, and drove out and removed the said *A. B.* from the possession and occupation of his said tenements, and for a long time withheld the said *A. B.* from the possession and occupation of the same, *(he being so driven out and removed therefrom as above)* and the said *C. D.* during all the time aforesaid, had and received to his own proper use, all the issues and profits of the said tenements of the yearly value of 100*l.* and brought other injuries upon the said *A. B.* to the great damage of the said *A. B.* and against the peace of our Sovereign Lord the King, his crown and dignity: And whereupon the said *A. B.* by *R. R.* his attorney, complains that the said *C. D.* on the 10th day of *May*, in the 10th year of the reign of his said present Majesty, with force and arms broke and entered into the said five messuages, with the appurtenances, at *Westminster*, in the county aforesaid, and drove out and removed the said *A. B.* from the possession and occupation of his said tenements, and for a long time *(that is to say, from the 10th day of May, in the 10th year aforesaid, until the day of suing out the original writ of the said A. B. withheld the possession and occupation of the said tenements from the said A. B. he being so driven out and removed as above)* and also the said *C. D.* had received to his own use, all the issues and profits of the said tenements, of the yearly value of 100*l.* during all the time aforesaid, and brought other injuries upon the said *A. B.* to his great damage, and against the peace of our said Sovereign Lord the King, his crown and dignity, wherefore he declares he is injured, and hath damage to the value of 200*l.* and therefore he brings his suit.

AND

AND the said C. D. by P. P. his attorney, comes and defends the force and injury, when, *Plea in abatement that there is no such writ.*
Ec. and craves *oyer* of the said writ, and it is read to him in these words, to wit, *GEORGE* the Third, *Ec.* To the sheriff of *Middlesex*, Greeting: IF *A. B.* shall give you security that his suit shall be prosecuted, then put *C. D.* late of *London*, taylor, by fareties and safe pledges, that he be before us in *(the return)* wheresoever, *Ec.* to shew wherefore with, *Ec.* *(as in declaration to the end)* and have you there the names of the pledges, and this writ. Witness ourself, at *Westminster*, the 10th day of *November*, in the 10th year of our reign, which being read and heard, the said *C. D.* prays judgment of the said writ, because he pleads that there is not any such form of a writ in an action of *trespass* and *ejectment* in the register of writs, as the form aforesaid; and that the said writ varies from the said register of writs in this respect, inasmuch as it does not appear by the said writ, that the messuages therein mentioned were the messuages of the said *A. B.*; and this he is ready to verify; wherefore he prays judgment of the said writ, and that the same may be quashed, *Ec.*

J. Burland.

George the Third, *Ec.* To the sheriff of *Middlesex*, Greeting: WHEREAS *A. B.* late in our court before us at *Westminster*, by bill, without our writ, and by the judgment of the same court, recovered against *C. D.* his term yet to come, of and in one messuage or tenement, with the appurtenances, situate, lying, and being at *Westminster*, in the county aforesaid, which *J. F.* on the 10th day of *May*, in the 10th year of our reign, demised to the said *A. B.* for a term of years not yet expired, *to wit*,
Writ of possession by bill.
 on

AND

The Modern Practice of the

on the 24th day of *March* then last past, to the full end and term of five years thence next ensuing, and fully to be complete and ended, by virtue of which demise, the same *A. B.* entered upon the same tenements, with the appurtenances, and was thereof possessed until the said *C. D.* afterwards, *to wit*, on the same 10th day of *May*, in the 10th year aforesaid, with force and arms, entered into the said tenements, with the appurtenances, and him the said *A. B.* from his farm aforesaid, the said term then and there not being expired, ejected, drove out, and removed, and him the said *A. B.* hath withheld from his possession thereof, and still doth withhold, whereof the said *C. D.* is convicted, as appears to us upon record: THEREFORE we command you, that without delay, you cause the said *A. B.* to have his possession of his term aforesaid yet to come, of and in the tenements aforesaid, with the appurtenances, and in what manner you shall have executed this our writ, make appear to us at *Westminster*, on *(the return of writ of possession)*: And have there then this writ. Witnels *William Lord Mansfield*, at *Westminster*, &c.

Lee.

This writ must be ingrossed on a 2 s. piece of stamped parchment. Make *precipe* for office thus:

Precipe for
office.

Middlesex, to wit, Writ of possession for *A. B.* on the demise of *F.* against *C. D.* for a messuage or tenement, with the appurtenances, situate at *Westminster*, in the county of *Middlesex*.

Returnable *(the return)*.

R. R. attorney.

Carry

Carry writ and *precipe* to Mr. Heberden; pay him signing same 1 s. and 8 d. Sealing at seal office 7 d. Sheriff's warrant thereon 2 s. and 4 d. His fees executing same is 1 s. in the pound, on the yearly value of the premisses, if same doth not exceed 100 l. *per annum*, and 6 d. in the pound for every 20 s. above, and 2 s. returning writ. Officers fee executing writ usually 1 l. 1 s.

If proceedings are by original, the writ of Note, possession differs only from the above in the introductory part, and the return; for which see *Inquiry by original*, page 131 in this work. It is signed by Mr. Adams, and sealed as the above writ.

Ejectment may be brought against a tenant Practical re- who gives notice to quit at such a time, and marks, doth not quit accordingly, as well as when the landlord gives the tenant notice to quit. *MS. Case.*

Landlord must not receive any rent after ejectment brought, nor till same is determined, it is a waiver of the trespass on which such action is grounded, and he will be nonsuited on the trial for so doing. His remedy for the rent in arrear is by action for the *mesne profits*. 2 Bur. 668.

On landlord being made defendant under Stat. 11 Geo. 2. on non-appearance of tenant, court will stay execution against casual ejector. 2 Bur. 756.

If defendant absconds to avoid being served with declaration in ejectment, court will on motion order that service on some person in the house shall be sufficient. 2 Bur. 1116.

If defendant is personated in order to evade service on affidavit of the fact, court will make an order that same shall be deemed good service. 2 Bur. 1182.

If judgment is obtained against casual ejector, so no trial is lost, court will set such judgment aside in favour of landlord or tenant, on paying costs and entering into the common rule.

No person can be admitted to defend in ejectment with tenant in possession, but one that hath been in possession, or who receives the rents.

The landlord cannot be compelled by tenant to join as a defendant in ejectment. If he should be a member of parliament, tho' he be joined, he cannot be compelled to waive his privilege. *Salk.* 256.

By *Stat.* 11 *Geo.* 2. court are empowered to suffer landlord to make himself defendant, by joining with tenant in the action, in case he shall appear. If tenant refuses to appear, judgment shall be signed against casual ejector; but if landlord enters into rule, court will order stay of execution against casual ejector until they make further order therein.

By same statute, a tenant receiving declaration in ejectment, and not acquainting his landlord thereof, so that he may defend the title, shall forfeit three years improved or rack rent of the premises he holds of such landlord.

Where plaintiff recovers in ejectment by verdict, he may bring action for the *mesne profits* from the time of defendant's entry laid in declaration. It is not necessary at the trial to prove any entry of defendant, because he confesses same by rule, and his entry on plaintiff is found by the verdict against him. It may be brought either by plaintiff in the action, or by lessor or lessee; where brought by plaintiff, he need only on trial to produce *p'sea* of recovery; but where lessor or lessee brings the action, they must prove their title over again, if insisted

insisted on by the other side, or else they will be nonsuited. 2 *Lur. Rep.* 668.

Plaintiff in ejectment being a mere nominal person, and trustee for lessor, if he releases the action, or if pending action for the *mesne profits* he releases same, he may, on motion, be committed for a contempt. 2 *Strange* 899.

In ejectment brought on the demise of an infant, court, at defendant's request, will stay proceedings till a sufficient plaintiff be named, or some person will undertake on behalf of infant to pay such costs as shall be adjudged to defendant. 2 *Strange* 932. 2 *Barn. K. B.* 140.

If a house is empty, or lands untenanted, and the proceedings are by sealing a lease on the premises, when you move for judgment, there must be an affidavit of sealing such lease, and the purport of lease should be shortly set forth, and in what manner defendant got possession from lessee (who is always made plaintiff in this case) and how declaration was delivered to defendant, that the court may judge of the consistency of the proceedings. *MS. Case.*

By *Stat. 4 Geo. 2.* where half a year's rent is in arrear, and the landlord hath a right to re-enter for non-payment, he may serve a declaration without a formal re-entry, or affix same on the door of the house, or on the most notorious part of the land, which shall be deemed a legal service; and on proof that such rent was due before declaration served, and no sufficient distress to cover same, the lessor shall recover.

On moving for judgment in this case, there must be affidavit stating the several matters aforesaid, or that defendant could not be legally served with the declaration, (*as the case may be*); and that copy thereof was affixed as aforesaid, and where, or court will not grant rule. *Ib.*

If such tenant, before trial, tenders to plaintiff, or brings into court the rent in arrear, with costs, all further proceedings shall cease. *Ibid.*

By *Stat. 11 Geo. 2.* Tenants holding at a rack rent, or where rent reserved shall be three-fourths of the yearly value, who shall be in arrear for one year's rent, and shall desert the premises, so that no sufficient distress can be had, two justices of the peace (having no interest therein) at the request of landlord, may view same, and affix on the most notorious part thereof, notice in writing, what day (*at the distance of fourteen days at least from such first view*) they will return to take a second view thereof; and if on such second view, the tenant, or some person on his behalf, shall not pay the rent in arrear, and there shall be no sufficient distress, the justices may put the landlord into possession, and the lease thereof to such tenant as to any demise shall be void.

A suit in ejectment doth not abate by the death of nominal plaintiff, for while there is a man of the name *in rerum natura*, court will intend he was the plaintiff. 1 *Mod.* 252.

Where term in ejectment is near expired, it may be amended without consent. 2 *Strange* 1272.

If judgment is given against the casual ejector for want of the real defendant's confessing, &c. he cannot bring a writ of error to reverse a judgment to which he was not a party; and if he brings such writ in the name of the casual ejector, the casual ejector being a friend to the plaintiff's lessor, he may either release the errors, or move court for a *non pros*, which they will order to be entered. Lord C. J. *Gilbert's Law of Ejectments*, page 23.

Plaintiff

Plaintiff cannot have judgment against casual ejector, till common bail filed. *Ibid.*

If error brought by defendant before errors assigned, plaintiff must file bill of ejectment or *latitat*, (as case may require). *Ibid.*

A new trial may be granted in ejectment, as well as in any other action, if the circumstances of the case justify such request. 3 *Bur.* 1255.

Matters of ejectment are immediately under the controul of the court, and they, on application, will model them to answer every purpose of justice and convenience. 3 *Bur.* 1304.

On application, court will admit landlord as a co-defendant with his tenant, or to defend the title alone. *Ibid.*

Where tenant in possession *claims nothing*, he ought to join on neither side, but let the parties have a fair trial between them on the real merits. 3 *Bur.* 1293, 1300, 1304.

The failing in proof of actual ouster is sufficient to bar a nonsuit. 3 *Bur.* 1897.

Trustees shall not recover possession from or dispute title with their *cestui qui trust*. 3 *Bur.* 1901.

E R R O R.

If judgment is given in the *Common Pleas*, or *Observations* in any inferior court of record, the party against whom same is given, apprehending himself aggrieved, and that judgment is contrary to law or irregular, may have a writ of error returnable in this court.

No fine, common recovery, or judgment, in any real or personal action, shall be reversed for error, unless such writ be brought and prosecuted with effect within twenty years. *Stat.* 10 & 11 *W.* 3.

Bail cannot bring error on the original judgment; nor can principal and the bail join in error. 3 *Danv. Abr.* 91. P. 14.

If judgment against two in C. B. both must join in the writ of error; and if one refuses, he must be summoned and sequestered, for else every defendant might bring a separate writ of error, and delay plaintiff, tho' the judgment might be affirmed once or oftener. *Carth.* 7.

By *Stat. 27 Eliz.* Judgments given in this court in debt, detinue, covenant, action on the case, *ejectione firmæ*, or trespass, so it was originally commenced there, (except where the King is a party), error may be brought in the Exchequer chamber, and same either reversed or affirmed.

After reversal or affirmance, record must be remanded, that court may proceed thereon. *Ibid.*

Bail cannot have a writ of error in the Exchequer chamber. *Ibid.*

By *Stat. 3 Jac.* 1. Execution shall not be stayed upon any writ of error for reversing a judgment in any action or bill of debt upon any single bond for debt, or on any obligation, with a condition for the payment of money only, or on any action or bill of debt for rent, or on any contract, unless the party suing same, shall, with two sufficient sureties, enter into a recognizance in double the sum recovered, to prosecute same with effect, and pay (if judgment affirmed) all debts, damages, and costs adjudged on former judgment; and also all costs and damages to be awarded for delay of execution.

By *Stat. 13 Car.* 2. Execution shall not be stayed on writ of error, after verdict and judgment thereon, in an action of debt on 2 E. 6. for not setting out tithes, action on the case upon promise for payment of money, action
for

sur trower, covenant, detinue, and trespass, unless bail given as directed by *Stat. 3 Jac. 1.*

By *Stat. 16 & 17 Car. 2.* Execution shall not be stayed on writ of error, *after verdict and judgment*, in any personal action, unless bail given, nor on *judgment after verdict in dower*, or *ejectione firmæ*, unless the plaintiff in error shall become bound, &c. writs of error brought by executors and administrators, popular actions, actions on the penal statutes, (*except on 2 E. 6.*) Indictments, presentments, informations, and appeals, are excepted out of this statute.

Writs of error out of inferior courts shall in ^{Note.} all cases be *superseas's* when allowed without putting in bail, they being omitted out of the above statutes.

No bail required on error brought on judgment on bond for performance of covenants, or on bail-bond. *3 Jac. 1.*

Error will not lie in the Exchequer chamber on judgment on a *scire fac.* but only in *K. B. Stat. 27 Eliz.*

By *Stat. 5 Geo. 1.* All writs of error wherein there shall be any variance from the original record, or other defect may be amended by the court, and made agreeable to record; and where any verdict hath been given in any suit, &c. in any of his Majesty's courts at *Westminster*, or other court of record, judgment thereon shall not be stayed or reversed for any defect or default in form or substance, in any bill, writ, &c. or for variance in such writs from the declaration or other proceedings.

The books speak of three writs of error, *viz.*

Writ of error to remove the record from an inferior court to this court, or from the *C. B.* here, or to remove the record of a judgment given in this court by bill into the Exchequer.

Writ

The Modern Practice of the

Writ of error *de recordo quod coram vobis residet*, is brought when there is any error in the record, as want of original, and touching matters in fact, as nonage, or death of the party, &c.

Writ of error *tam in redditione judicii quam in adjudicatione executionis*. This writ may be brought by bail upon a judgment recovered against them by *scire fac*.

These writs issue out of Chancery, and are directed to the chief justice of the court where the judgment was given; there must be fifteen days between the *teste* and return of these writs, and they must be returnable *ubicunque*, and not on a day certain, but on a common return day.

The Common Pleas on this writ send up the record to the *K. B.* but on judgment by bill in this court, and error brought thereon, returnable in the Exchequer chamber. This court sends only the transcript of the record, so that where the error determines in the Exchequer chamber by *abatement* or *discontinuance*, there must be a *remittitur* before the judgment is again in this court.

Directions
how to bring
writ of error.

When plaintiff hath obtained judgment, if the defendant means to bring error thereon, it is most prudent for the attorney concerned for him, pending rule for judgment, to take out rule, to be present at taxing costs. Get same at Mr. Cooper's office; pay him 4 s. for rule, and serve copy on plaintiff's attorney. Bespeak writ of error, and get same allowed, that you may be ready to serve copy of allowance when you attend to tax costs. It behoves plaintiff's attorney, if error brought, to file a bill or original in due time, (*according as the nature of the action may require*), or the want thereof may be assigned as error,

The

The METHOD of prosecuting writ of error, when to remove cause into this court, or from this court to the Exchequer chamber.

Make *precipe* for the curfitor: Carry same to the proper curfitor of the county where original action brought. Their office is in *Chancery Lane*, opposite *Lincoln's Inn*.

Middlesex, Writ of error for *A. B.* (*defendant* *Precipe for in first action*) at the suit of *C. D.* (*plaintiff in writ of error*) on a judgment in case, (*or as action* *was*), given in the court of King's Bench by bill.

Dated *Aug. 1772.*
R. R.

Returnable (*the return*) which curfitor makes.

When you carry *precipe* to curfitor, you pay him for writ of error, which he gets sealed at next seal, and returns to you. Fee for writ of error is 1 l. 1 s. 6 d. If you want it before a general or private gift seal, you must pay for private seal and expedition over and above the aforesaid charge.

When you have got writ of error from curfitor, it must be immediate allowed by Mr. *Way*, Clerk of the Errors, at his office in *Portugal Street*, or plaintiff is not prevented taking out execution. Rule, *Easter 26 Car. 2.* When and with whom to be allowed.

On bringing writ to clerk of the errors, he takes down plaintiff and defendant's names, and where their attornies reside, in order that he and the other officers who have the management of this process, may know where to send to them in the course of the business. You pay him for allowance 2 l. on which he gives you a note in writing

Manner of allowing same, and fee paid on allowance.

writing of such allowance, a copy of which must be served immediately on the attorney for the plaintiff in the original suit; for till that is done, neither your client, nor his property, are safe from the judgment defendant in error hath obtained.

Form of allowance of writ of error.

Between

A. B. }
and } Case, (or according to
C. D. } nature of action.)

Aug. 1772. I have allowed a writ of error in this cause.

J. WAY, Clerk of the Errors.

When to put in bail under rule Easter 16 Car. 2.

If the matter is bailable under the above statutes, plaintiff in error must put in bail within four days after the delivery of writ of error to the clerk of the errors, or defendant in error may take out execution, notwithstanding such writ and allowance thereof.

How to put in bail, and notice thereof.

Take bail to clerk of the errors, who enters them in his bail-book, and at a judge's chambers takes same. Pay him taking bail 1l. 4s. 6d. Give notice in writing to defendant's attorney in error same as in a common case, only styling it at top, *In error*, and making defendant at law plaintiff in error.

When to except against bail.

Bail must be excepted against by defendant in error in twenty days after plaintiff's notice of same being put in, or same are deemed good bail. 5 *W. & Mary*. The exception must be entered in Mr. Way's bail-book. No notice in writing is given plaintiff's attorney.

Note,

In ejectment on verdict, and error brought, plaintiff's own recognizance is sufficient, without any surety. He is to be bound in double the value of one year's rent, and must be examined on taking his recognizance, if he is worth

so much. IN DOWER on error brought, plaintiff hath the same right. 16 & 17 Car. 2.

After defendant in error hath excepted against plaintiff's bail, he must take out rule with clerk of the errors for better bail; pay for same 2 s. serve copy on plaintiff's attorney. If the said bail do not justify, or others added, and justify in four days after service of the rule on his attorney, defendant in error may sue out execution.

Manner of compelling a justification, and justifying in error.

A. B. } UNLESS the plaintiff in the writ of Rule for
and } error puts in better bail within four better bail.
C. D. } days next after notice hereof given to
the said plaintiff, or his attorney, execution will
issue.

J. WAY, clerk of the Errors.

This execution only removes *superfedeas* to Observa- former execution; the error remains, and plain- tions.
tiff may proceed therein, if he thinks proper.

Plaintiff in error must take care to have his bail justify in due time, for court will not allow him an hour's further time for that purpose, on motion or summons. The charge of justifying bail is 10 s.

Same bail may be bail in error, as were bail in the original action, unless on writ of error in parliament, and there new bail must be taken.

Bail in error cannot render plaintiff in error, the recognizance being, *That plaintiff in error* Recogni-
shall prosecute his writ of error with effect, and if zance of
judgment be affirmed, shall satisfy the debt, dama- bail.
ges, and costs recovered, together with such costs
as shall be awarded by occasion of the delay of exe-
cution, or else that they (the bail) shall do it for
him.

If

When defendant may have rule for plaintiff in error, to certify or transcribe the record.

If writ of error is returnable the first return in term, (*there being but two returns in each term for that purpose*) on return of writ, defendant in error may apply to clerk of the errors for a rule for plaintiff in error to certify or transcribe the record; pay for same 2s.; it is an eight-day rule exclusive of the day served; serve copy on plaintiff's attorney, who, before rule is out, calls on clerk of the errors, and pays him 1l. 1s. in part of transcript money. If the said 1l. 1s. is not paid in time, or the remainder of transcript money, when called for by clerk of the errors, then on a demand in writing being made for same, clerk of the errors at request of defendant in error, will enter a *nonsuit*.

Rule to transcribe.

A. B. } UNLESS the plaintiff in the writ of
against } error certifies the record within eight
C. D. } days next after notice hereof given
to the said plaintiff, or his attorney, a nonsuit
will be entered.

J. WAY, *clerk of the Errors.*

Observation.

If writ of error is returnable the first return of a term, plaintiff in error must transcribe same term, alledge diminution the term following, and assign errors the term next after; and the term after that, argue the errors. This is where defendant in error pushes him, for if defendant in error does not give rule to transcribe on the return of the writ, but lets a term or two escape, and then gives rule to transcribe, plaintiff must transcribe of term rule is given, and alledge diminution same term, assign errors the next, and argue same the term after.

The time taken by clerk of the errors to transcribe record.

If error brought returnable the first return of a term, clerk of the errors takes the whole term to transcribe the record, and brings in the transcript on the first day of the next term. If returnable on any other return, he takes the whole vacation

vacation to transcribe same, and brings in the transcript on the first day of the next term.

If the plaintiff in error does not enter the transcript on record the same term it is brought into the office, defendant may, and the party who first takes the transcript out of the office is to keep it no longer than while a copy is made, and then bring it back, that the defendant may make a copy thereof.

Defendant may take out a *scire facias quare executionem non*, as soon as the transcript is brought into the office of the chief clerk, and entered in the book.

On error from an inferior court, where the proceedings were by bill, the return of the *scire facias quare*, &c. and all subsequent writs must be returned on a day certain. As to the return of such writ.

Error on a judgment given in the palace court, the *scire facias*, &c. must be made returnable on a general return; the writs in that court being returnable on their court days, and not on such return days as in this court. Where by original on a general return.

If the transcript be brought into the office before the *essoign* day of any term, the *scire facias* may bear *teste* the last day of the preceding term. If brought in within the term, it may bear *teste* the first day of that term. How to teste a *scire fac.*

Plaintiff in error can have no *oyer* of this writ, or plead any thing thereto but *an assignment of error*. Note.

On *scire feci* returned on first *scire facias*, or *nihil* on two *scire facias*'s, defendant in error may give a rule for judgment, which will be out in four days, and he is not obliged to give notice of it, or to call for an assignment of errors. On *scire fac.* when defendant in error may give rule for judgment.

When rule for judgment on *scire facias* is out, and plaintiff in error has not assigned errors, defendant must enter the *scire facias*; if but one, and a *scire feci* of that term in which the errors being assigned, and

H h

scire

proceedings
against
plaintiff in
error, or his
bail.

scire facias was returnable; if two, and *nihil* returned thereon, then of that term in which the first *scire facias* was returnable, with an award of the second, and of execution, and defendant in error may thereupon sue out any execution against plaintiff, his body or goods, or on a *non est inventus* returned, may sue out a *scire facias* against the bail.

Note.

On judgment on *scire facias*, defendant in error is not intitled to costs, and therefore if he would have costs, he must *non pros* the writ of error.

The method
of nonprof-
sing writ of
error.

Get a rule from the clerk of the errors for the plaintiff in error to assign errors *de recordo*; serve plaintiff's attorney in error with a copy of same. It is an eight-day rule, exclusive of day served, and if plaintiff does not assign errors within the time of rule, defendant in error may sign a nonsuit, and have costs, according to stat. 3 Hen. 7.

In the Exchequer chamber,

Rule to as-
sign errors.

A. B. } UNLESS the plaintiff in the writ of
against } error assigns errors within eight days
C. D. } next after notice hereof given to the
said plaintiff, or his attorney, a nonsuit will be
entered.

J. CECIL, clerk of the Errors.

The manner
of assigning
errors, and
defendant's
pleading
thereto.

On plaintiff in error being served with rule to assign errors *de recordo*, he may assign same, if he thinks proper, though execution on the judgment on the *scire fac*. has been really executed, and the judgment be reversed, he shall have restitution, if the errors assigned have sufficient ground for same.

Special

Special assignment of errors must be signed by council, and a copy on treble penny stamped paper must be delivered to defendant's attorney.

If the errors assigned be general, the defendant in error may immediately plead *in nullo est erratum*, which joins the issue.

After this plea, plaintiff in error is never permitted to amend general errors.

After *in nullo est erratum* pleaded, neither defendant or plaintiff in error can alledge diminution without leave of court, though court may order a *certiorari ad informandum conscientiam curiæ* to affirm, but not to reverse a judgment. Diminution.

Diminution is not alledged in records out of inferior courts.

In the Exchequer chamber,

A. B. } UNLESS the plaintiff in the writ of Form of rule
against } error alledge diminution within to alledge di-
C. D. } eight days next after notice hereof minution.
given to the said plaintiff, or his attorney, a
nonsuit will be entered.

J. CECIL, clerk of the Errors.

If plaintiff in error prays a *certiorari*, defendant in error may get a rule from clerk of the errors to return same, and serve copy on plaintiff's attorney. How to proceed on certiorari.

If *certiorari* is not returned and filed by the time given by rule, defendant may join in error by pleading *in nullo est erratum*, and enter a *non misit breve* on record, taking no notice of the diminution.

When a *certiorari* is returned and filed, defendant may join *in nullo est erratum*.

If want of an original is assigned for error, plaintiff in error does not sue out a *certiorari*, but the defendant in error must get a rule from Directions on errors assigned.

H h 2

clerk

The Modern Practice of the

clerk of the errors, for plaintiff in error to return his *certiorari*, which if he does not do, the assignment of errors is naught.

If the record removed be of *Easter Term*, and want of an original be assigned for error, the defendant may alledge *diminution*, and then a *certiorari* goes to the *custos brevium*, to certify an original of *Easter Term*, that being the term of which the *placita* is.

If the *custos brevium* certifies a *variant* original, or that there is no original, defendant in error may come and suggest before *in nullo est erratum* pleaded, that there is an original of another term, *viz. Hilary* or *Michaelmas*, and then a *certiorari* issues to the *custos brevium* to certify same, and another to the Chief Justice of the Common Pleas, to certify the continuances.

If the *custos brevium* certifies a *wrong original* of the same term *placita* is of, the defendant in error may suggest there is a *right original* even of same term, and when both are before the court, they will apply the record to that which is good.

Issue and
concilium.

When *certiorari* is returned and filed, and issue is joined by defendant's pleading *in nullo est erratum* thereto, either party may move for a *concilium*, and set down the cause for argument with the clerk of the papers.

Time of delivering paper-books, and how to be delivered.

They used to be delivered to the judges at least two days before the day of argument, but by rule *Easter 2 Jac. 2.* they are directed to be delivered four days before the day of argument.

Plaintiff in error delivers books to the Chief Justice and the first *puisne* judge, and defendant delivers books to the other judges. Rule, *Mich. 17 Car. 1.*

Note.

If these rules are not complied with, court will not hear the argument, therefore the attorney

ney for the party who expects judgment, should deliver the books, if the other attorney neglects.

Plaintiff in error, if he designs to argue same, When error must give ten days notice to clerk of the errors brought in in Exchequer chamber, and deliver four books the Exchequer chamber. to the judges of the Common Pleas, and defendant four books to the Barons of the Exchequer, four days before the argument. Rule, *Easter 33 Car. 2.*

In the Exchequer chamber, there is no *scire facias ad audiend' errores*, it is done by notice given to the parties concerned. *1 Vent. 34.*

This writ is not well brought before record of judgment be certified, to reverse which, the writ of error was brought, and errors assigned thereon, there being no record in court to warrant granting this writ before judgment certified, K. B. and errors assigned.

If defendant in error does not appear on *scire fac. &c.* to hear errors in this court, or on notice given, when brought in Exchequer chamber, you set down the cause for argument, and the plaintiff or defendant in error (*as the case may be*) shall be heard *ex parte*.

It abates by the death of the plaintiff in error, but not by the death of defendant, either before or after errors assigned. In what cases error abates, and how to revive same.

On abatement, plaintiff in original action may take out execution on suggesting death of party on record, without suing out *scire fac.* *Salk. 219.*

If defendant dies, plaintiff in error cannot proceed to reverse same till he hath sued out *scire facias* to hear errors against his executors.

When error brought merely for delay, executor of defendant in error should sue out *scire fac. &c.* and then plaintiff in error will be obliged to assign errors. If they were assigned before defendant's death, executor proceeds (*as*

if defendant was living) till judgment affirmed, and then he must revive by *fi re fac*.

Where error abates by the act of plaintiff, if he sues out a new writ, it is no *superfedeas*, defendant may have execution, but it is otherwise where error abates by the act of God. 1 Vent. 353.

General directions for prosecuting or defending a writ of error.

As this writ is in general brought to gain time, and on no real ground of error, when that is the case, the usual practice is for the attorney for the defendant in error on taking out rule to transcribe, to leave a copy of the *possea* on inquiry, with clerk of the errors for to transcribe by; and when transcript is ready, to examine same with t easury roll, the next term he takes out rule to alledge diminution, and serves same on plaintiff's attorney; the term following, he takes out rule to assign errors, and serves it as before; and the term next after judgment in error is affirmed, if error is brought on judgment by bill in this court, it goes into the Exchequer chamber after transcript is complete; and Mr. Cecil executes the business to affirmance or reversal. If it is a judgment in the Common Pleas, and error brought in the King's Bench, the same steps are taken to procure writ of error; pay for writ 13 s. 4 d. It is allowed by Mr. Lewis in *Paper Buildings, Temple*; pay for allowance 2 l. and when transcript is complete, it comes into the K. B. and Mr. Way conducts the business to affirmance or reversal.

All plaintiff's attorney hath to do when the writ of error is brought merely for delay, is to take care writ is allowed, and bail put in, and justified in due time. When served with rule by defendant's attorney to transcribe, as it is an eight day rule, he must call on clerk of the errors within that time, and pay him 1 l. 1 s. in part of transcript money. He will give you a note in writing when you are to pay the remainder, which must be immediately paid: The next rule

defendant is served with, is a rule to allege diminution; it is an eight day rule, within which time it will be proper for him to inquire of the officer what is the charge of alledging diminution, as it is the largest sum paid in the course of prosecuting the error, except writ and allowance, and must be paid at the expiration of rule; the term after defendant serves plaintiff with a rule to assign errors; this is an eight day rule: You call on clerk of the errors, and pay him 8 s. and 6 d. and he does what is necessary. The term after the judgment is affirmed, plaintiff in error may have a rule from clerk of the errors to be present at taxing costs on the affirmance; pay him for rule 4 s. and 6 d. and serve copy on defendant's attorney, and he will give you notice when costs taxed, as in a common case.

George the Third, &c. To our trusty and well-beloved *William Lord Mansfield*, our Chief Justice assigned to hold pleas in our court before us, *Greeting*: BECAUSE in the record and proceedings, and also in the rendition of the judgment of a plea which was in our court before us by bill, between *A. B.* and *C. D.* of debt of 200 l. which the same *A. B.* demand of the said *C. D.* as it is said a manifest error hath happened, to the great damage of the said *C. D.* as by his complaint we have understood, the record and proceeding of which said judgment we have caused to be brought before our Justices of the Common Bench, and the Barons of our Exchequer, who are of the degree of the coif, to correct the errors in the same, according to the form of the statute of the 17th year of the Lady *Elizabeth Queen of England* thereof provided, in the chamber of our Exchequer aforesaid; and the said *C. D.* appearing in the same Exchequer chamber, hath said, that where

by

Certiorari to certify diminution of bill, bail, and warrant of attorney into the Exchequer chamber.

by the record aforesaid, sent to the same justices and barons, it appears that the said *A. B.* in *Hilary Term*, in the 12th year of the reign of our Sovereign Lord *George* the Third, now King of *Great Britain, France, and Ireland*, exhibited into the said court of our said Lord the King, before the King himself, his bill against the said *C. D.* in the plea aforesaid; and that he the said *C. D.* was in the custody of the marshal of the *Marshalsea* of our Lord the King, before the King himself: NEVERTHELESS the said *C. D.* at any time before, or at the time of exhibiting the bill of him the said *A. B.* was not in custody of the marshal of the *Marshalsea* of the said court of our Lord the King, before the King himself; neither was any bail ever filed for him the said *C. D.* in the said court, nor any such bill, and the continuances thereon, indorsed in our said court of the same term before us of record remaining; and where by the record aforesaid, so as aforesaid sent, it appears that the said *C. D.* constituted one *R. R.* his attorney against the said *A. B.* in the plea aforesaid: NEVERTHELESS the said *C. D.* hath said, that the said *R. R.* had no warrant of attorney thereof on record filed: AND WE being willing to be certified of the premises aforesaid in this behalf, command you, that the files of the bails of the city of *London*, and of the bills of the said *Hilary Term*, in the year aforesaid, in your custody, being searched; and also the rolls and other memorandums of the warrants of attorney of the same term, in your custody, of record, likewise remaining, being searched, what of the said bail, bill, and continuances thereon indorsed, and warrant of attorney aforesaid you shall find, to our Justices of the Common Bench, and the Barons of the Exchequer of the degree

degree of the coif, immediately into the chamber of our Exchequer aforesaid, you certify together with this writ. WITNESS, &c.

This writ of *certiorari* must be varied according to the matters wanted to be certified.

The ANSWER of William Lord Mansfield, the Chief Justice within named.

HAVING searched the files of bails of the city of *London*, and also of the bills of *Hilary Term* within written, being in my custody of record, I find no bail or bill between the parties within written, in the plea within specified, filed on record: HAVING searched likewise the rolls, and other memorandums of the warrants of attorney of the same term, between the parties within written, being likewise in my custody on record, I there find no warrant of attorney filed on record: *And this I certify* to the Justices of our Lord the King of the Common Bench, and the Barons of the Exchequer within written, as I am commanded.

MANSFIELD.

George the Third, &c. To the sheriff of *Middlesex*, *Gr eting*: WHEREAS *A. B.* lately in our court, before Sir *William De Grey*, &c. our Justices of the Bench at *Westminster*, by our writ, and by the judgment of the same court, recovered against *C. D.* of the parish of *St. Clement Danes*, in the county of *Middlesex*, taylor, 100 l. of debt, and 60 shillings for his damages which he had sustained, as well by occasion of the detaining of that debt, as for his costs and charges by him about his suit in that behalf expended,

Scire fac. quare executionem non in debt on a judgment removed out of the Common Bench, by writ of error into

pended, whereof the said *C. D.* was convicted, as by the inspection of the record and proceedings thereon, which we lately caused to come into our court before us for certain causes concerning error, appears to us from record; and now on behalf of the said *A. B.* in our said court before us, we have been informed, that although the said judgment be given in form aforesaid, yet execution for the said debt and damages still remains to be made to him; whereupon the said *A. B.* hath prayed us, that a proper remedy may be provided for him in this case: And we being willing that what is just should be done on this occasion, command you, that by good and lawful men of your bailiwick, you make known to the said *C. D.* that he be before us from (*the return*), wheresoever, &c. to shew if any thing he has or knows to say for himself, why the said *A. B.* ought not to have his execution against him for the said debt and damages, according to the force, form, and effect of the said recovery, if he shall think it expedient, &c. And further to do and receive what our said court before us shall then and there consider of him in this behalf; and have you there the names of those by whom you shall make known to him, and this writ. WITNESS, &c.

*Scire facias
ad audien-
dum errores
on writ of
error to re-
verse out-
lawry in
K. B.*

George the Third, &c. To the sheriffs of London, Greeting: WHEREAS *A. B.* lately in our court before us, impleaded *C. D.* late of London, taylor, in a plea, why, &c. (*here recite the writ*) to the damage of him the said *A. B.* 200 l. as it is said: And the same *C. D.* because he did not come before us to answer the said *A. B.* therein, was put in *exigent*, and in the hustings of London, on that account, was afterwards outlawed, as by the inspection of the record and proceeding thereof in our court before

before us remaining, manifestly appears : And because on the part of the said *C. D.* as we are informed, a manifest error hath happened in the record and proceeding, and also in the pronouncing of the outlawry aforesaid ; and thereupon the same *C. D.* hath prosecuted our writ of error, directed to our justices assigned to hold pleas in our court before us, commanding them, that inspecting the record and proceedings aforesaid, they farther cause to be done therein for the annulling of the outlawry aforesaid, what of right and according to the law and custom of this kingdom of *England* shall be to be done : And the same *C. D.* hath thereupon duly assigned his errors on record, as by the inspection thereof likewise appears to us : THEREFORE we command you, that by good and lawful men of your bailiwick, you give notice to the said *A. B.* that he be before us from (*the return*), wheresoever, &c. to hear the record and proceedings aforesaid ; and also the errors in the pronouncing of the outlawry aforesaid assigned, if he shall think fit, and farther to do and receive what our said court, before us, shall then and there consider concerning him in this behalf : And have there the names of those by whom you shall give him notice, and this writ. Witness *William Lord Mansfield, at Westminster, &c.*

METHOD of proceeding on writ of error coram nobis residen'.

You make a *precipe* for this writ as the former ; and get same of the curfitor, when it must be allowed in court by the secondary. It is said that it is no *superfedeas* but by leave of the court, because none of the statutes which oblige
the

the plaintiffs in error to put in bail, extend to this writ.

Error will not lie on this writ in the Exchequer chamber.

How to
compel assign-
ment of
errors.

To compel plaintiff in error on this writ to assign errors, you must move the court, when there will be a rule made for him to assign errors immediately: a copy of this rule may be served on the plaintiff's attorney in error.

Manner of
assigning errors,
and the nature of
them.

The errors to be assigned must be entered upon the record of the judgment. They must be errors in fact only, as errors in fact are not the errors of the judges, and the reversing a judgment given by them erroneous in matter of fact only, is not reversing their own judgment, which is as to matters of law.

When issue
to be joined,
and how.

On issue taken of errors in fact, plaintiff may proceed to trial *per pais*, as in a common case, or on plaintiff's neglect, defendant may carry the cause to trial. If found for the plaintiff on trial, he must move court to put cause in the paper for argument; and then on producing the *posita* to the court, they will give judgment of reversal.

There is no *scire facias* to assign error on this writ.

METHOD of proceeding on writ of error tam in redditione judicii quam in adjudicatione executionis.

This writ is taken out, allowed, and proceeded on as the former.

Who may
have this
writ.

Bail may bring this writ to reverse a judgment recovered against them by *scire facias*.

Bail cannot join the principal with themselves in this writ of error.

It lies on a judgment for the plaintiff in the court of King's Bench, afterwards affirmed in the Exchequer chamber, and an award of execution in the King's Bench, on a *scire facias* brought by plaintiff against the defendant's bail. In what cases this writ lies.

The defendant cannot have this writ returnable in the Exchequer chamber for the merits of the first judgment have been examined and such second writ is no *superfedeas* to the execution; and if execution is sued out by the plaintiff, it will be no contempt; but it would be otherwise, if there had been no writ of error brought before on the original judgment. *Salk.* 263.

THE METHOD of prosecuting a writ of error in parliament.

Get curfitor to procure a warrant from the King, for which you pay him 5 l. How to sue it out.

When this writ is brought, it is made returnable immediately, or on a prorogation *ad proximum parliamentum*, because during the session they sit continually, and have no vacation. The return.

It is allowed by Mr. Way, clerk of the errors in the K. B.; you pay him for allowing 4 l. Serve copy of allowance on defendant's attorney as in a common writ of error. Allowance.

The chief justice of this court carries the record and transcript to the Lords; and after they are examined there, leaves transcript, and sends back record. By whom returned.

There is no *scire facias* on this writ, on motion made in the house by a peer, on behalf of defendant, a day is appointed for the plaintiff to assign his errors. They allow plaintiff error to assign his errors. Time of assigning errors, and how same are to be assigned.

tiff but eight days to assign same; if not done in time, a *non pros* and *remititur* issues from the clerk of the parliaments.

If diminution alleged.

If plaintiff in error alledges diminution, and prays a *certiorari*, same to go without motion, and to be returned in ten days; if not done, or good cause shewn to the house to the contrary, plaintiff will lose the benefit of this writ.

How plaintiff must proceed to bring writ to a hearing.

Plaintiff in error must get a peer to move, that on assigning errors defendant may appear and make his defence.

Issue and hearing.

After issue joined on *in nullo est erratum*, get a peer to move house to appoint a day for hearing the errors, at which day both parties must attend by counsel, usually two on a side, you cannot have more. If printed cases are delivered by both parties, or either, to the lords, they must be signed by counsel. On the hearing, the Lords either affirm or reverse the judgment, on which clerk of the parliaments remands transcript of record into the K. B. with the affirmation or reversal to be entered on record.

The METHOD of prosecuting writ of error from IRELAND.

How to compel plaintiff to assign errors.

You must move the court, who will order plaintiff to assign errors within a week after service of rule, if plaintiff, his attorney or agent, cannot be found (on affidavit of fact and motion), court will order that sticking up rule in the K. B. office shall be good service on plaintiff in error.

Joining in error.

Plaintiff in error must move court for rule for defendant to join in error: he hath four days to join in error after service of rule.

Assigning errors.

On an assignment of errors from Ireland, there must be an affidavit annexed verifying same.

same. On this writ no *scire facias* to hear error lies.

If judgment is affirmed here, record is transmitted to *Ireland*, that court there may award execution. When judgment affirmed.

Error brought in this court on judgment in the Common Pleas, and bail put in, if such judgment be affirmed, and error brought in parliament, there must be a new recognizance; the same if brought in the Exchequer chamber on judgment of this court. *Salk.* 97. *Strange* 527. Practical remarks.

If action by original in this court, and error brought in parliament, if judgment reversed, they will give same judgment as this court ought to have done. *MSS. Cases.*

In matters of weight and difficulty, the lords examine the errors by the advice of the judges; if reversed, chancellor is ordered by house to do execution accordingly; but if affirmed, record is remanded, and *K. B.* issues execution. *Inst.* c. 8. part 1. p. 301.

Writ of error returnable before judgment given, is such a fault as is not amendable by the statute 5 *Geo.* 1. *Strange* 807.

Error in judgment, on a writ of error brought thereon, may be amended without costs, the statute not giving costs on amending as it does on quashing. *Strange* 863.

Court will not quash writ of error, if there are twenty-nine years between judgment and bringing writ, tho' plaintiff is restrained to twenty years, as it would deprive him of the benefit of replying to the exceptions in the statute. *Strange* 837.

No error will lie in the *Exchequer chamber* to reverse a judgment in an action *qui tam*, the King being a party, nor on the stat. *de scandalis magnatum.* 1 *Vent.* 49.

The Modern Practice of the

If a *scire fac.* goes against bail in this court, and two *nibils* returned, and judgment thereon, no error can be brought but in parliament. 1 *Vent.* 168.

The Exchequer chamber cannot intermeddle with errors in fact on judgments in this court, the statute extends only to such cases as have no remedy but in parliament. 2 *Mod.* 194.

Action of debt lies on judgment in this court, notwithstanding error brought in the Exchequer chamber; as the record still remains here, the error is only a *superfedeas* to the execution. 4 *Mod.* 247.

No bail is necessary on writ of error brought on an action of debt on a former judgment. 3 *Bur. Rep.* 1549.

A writ of error cannot be *non-prossed*, without defendant in error first taking out rule to assign errors. 3 *Bur. Rep.* 1772.

A plaintiff in a suit may bring error to reverse his own judgment, but when brought, court on motion will oblige him to assign errors. 3 *Bur. Rep.* 1772.

No damages can be recovered on a *scire facias quare executionem non.* 3 *Bur. Rep.* 1791.

When judgment against several, error cannot be brought by one defendant against such judgment. 3 *Bur. Rep.* 1791.

If error brought in parliament on judgment in *ejusdem*, court will oblige plaintiff in such writ to enter into a rule not to commit waste, pending same. 3 *Bur. Rep.* 1823.

C O S T S.

There was no such thing as costs of suit at common law, till the statute of Gloucester, by which IT IS ENACTED, That if any person recovered

vered damages in a plea personal or mixed, he should have his *costs*.

By stat. 43 *Eliz.* IT IS ENACTED, That if on any personal action brought in any of the courts at *Westminster*, not being for any title or interest of lands, or concerning the freehold or inheritance of lands, or for any *battery*, it should appear to the judge who tried same, and so certified by him, that the debt or damages recovered did not amount to 40s. or above; in every such case, the judge before whom same was tried, should not award greater costs than the amount of such debt or damages, or less at their discretion.

By stat. 22 & 23 *Car. 2.* IT IS ENACTED, That in all actions of *trespass*, *assault*, and *battery*, and other personal actions, if the judge who tried same, does not certify on the back of record, under his hand, that the *assault* or *battery* was sufficiently proved by plaintiff, or that the title or freehold proved by plaintiff, or that the title or freehold of the lands mentioned in plaintiff's declaration was chiefly in question; the plaintiff in such action, in case the jury should find the damages under 40s. shall not recover more costs than damages; and if more costs should be awarded, such judgment shall be void.

By the 11th and 12th of *Will. 3.* the above statute is extended to *Wales*, *Chester*, *Lancaster*, and *Durham*.

By stat. 22 & 23 *Car. 2.* if defendant justifies Note. by any thing that brings the freehold on the record in question, plaintiff hath costs, though the damages given are under 40s. and without the judge's certifying same.

By stat. 8 & 9 *Will. 3.* IT IS ENACTED, That in all actions of *trespass*, if on the trial thereof the judge certifies on the back of record, if defendant is found guilty, that such *trespass* was *wilful* and *malicious*, the plaintiff shall

The Modern Practice of the

recover his damages and full costs touching the person, and not the title of lands.

By stat. 21 Jac. 1. in actions for *slanderous words*, if damages are under 40s. plaintiff shall recover no more costs than damages.

In all causes brought from inferior courts, the plaintiffs therein, if they recover, shall have costs, notwithstanding the above statutes.

By the 23 Henry 8. and 4 Jac. 1. *executors* and *administrators* when plaintiffs are not liable to pay costs, nor are *infants* suing by guardian.

By stat. 23 Hen. 8. persons suing in *forma pauperis* pay no costs, but are punished at the discretion of the court; if dispaupered, court generally order costs to be taxed, and on non-payment, the party is to be whipped.

By same statute a defendant is intitled to costs, if plaintiff in the action be *non-suited* after the appearance of defendant to such action, or if *verdict* for defendant. This statute, by 4 Jac. 1. is extended to all cases where plaintiff would have had costs in the like case.

By stat. 24 Hen. 8. defendant shall recover no costs on *non-suit* or *verdict*, where plaintiff sues to the *King's use*.

By stat. 18 Eliz. informers are to pay costs where they receive the whole benefit of the penalty of the statute under which they sue.

The stat. 8 & 9 Will. 3. gives costs on all actions on *demurrer* to the defendant, where plaintiffs in such actions are entitled to costs.

Costs on a *nonpro's* are given by these statutes.

Costs in replevin.

In *replevin*, the plaintiff had damages at common law, and costs by the statute of *Glaucoster*. The avowant or defendant was not entitled to costs by the common law; but by stat. 7 Hen. 8. he is entitled to damages and costs, if the plaintiff in such suit be *non-suited*, or have a *verdict* against him, or be otherwise barred.

By

By stat. 21 Hen. 8. *rent charges* are included, so that the avowant avowing for rents, customs, and services, &c. or for damages *feasant*, may recover costs under that statute.

There are no damages on this writ, only re- Costs in error.

By stat. 3 Hen. 7. defendant in error on judgment affirmed, is intitled to his damages and costs at the discretion of the judges: And by 8 & 9 Will. 3. on judgment for the defendant, if plaintiff brings error on such judgment, and same is affirmed, defendant shall have his costs. The stat. 3 Hen. 7. does not extend to a writ of error from *Ireland*, and it is doubted whether costs can be recovered on error brought in the Exchequer chamber, as the 27 of *Eliz.* which gives this writ is silent as to any costs thereon.

By stat. 3 Hen. 7. no costs where execution executed, and error brought, nor on writ of error on judgment in *formedon*.

In *quare impedit* on error brought, party may recover costs, and so in *assumpsit*.

This court usually refers matters of costs to the secondary, Mr. *Benton*, who settles same between the parties, except in very particular cases, where court gives special directions therein.

All statutes relating to costs are to be construed strictly. 3 Bur. 1286. Practical remarks.

Wherever plaintiff would be intitled to costs, defendant is so reciprocally. 3 Bur. 1724.

The general practice of the court is not to give costs to the *culprit* on attachment for contempt, though he purges himself on his examination, unless the complaint be very groundless and vexatious. 3 Bur. 1330.

An executor shall not pay costs upon discontinuing his action, where he is obliged to declare as executor, unless he hath knowingly brought his action wrong. 3 Bur. 1451.

RULE

RULE of Master's allowing COSTS in K. B. between Party and Party.

		l.	s.	d.
For the plaintiff.	Warrant to prosecute	-	-	0 1 0
	Affidavit of debt	-	-	0 5 7
	Bill of <i>Middlesex</i>	-	-	0 9 0
	<i>Alias</i>	-	-	0 7 6
	<i>Pluries</i>	-	-	0 7 6
	<i>Non omittas</i> is considered by master as			
	a double writ	-	-	0 18 0
	<i>Latitat</i>	-	-	0 11 0
	<i>Alias</i>	-	-	0 8 6
	<i>Pluries</i>	-	-	0 8 6
	<i>Non omittas, latitat</i>	-	-	0 12 0
	<i>Alias</i> and <i>pluries</i> each	-	-	0 9 6
	Attachment of privilege	-	-	0 11 0
	Allowed for caption on these writs	-	-	0 10 6
	Allowed for service of copy of same	-	-	0 5 0
	Letters and messengers each term	-	-	0 1 0
	Searching for common bail	-	-	0 3 4
	Filing common bail according to statute	-	-	0 7 2
	Attending court on bail justifying	-	-	0 3 4
	Searching for special bail	-	-	0 3 4
	Attending for instructions to draw declaration	-	-	0 3 4
	Drawing declaration and fair copy of same, <i>per</i> sheet	-	-	0 1 0
	If the matter special, master allows what paid to special pleader, and for attending him thereon			
		-	-	0 3 4
	Ingrossing declaration for delivery, <i>per</i> sheet, besides duty	-	-	0 0 4
	Warrant	-	-	0 0 4
	Ingrossing, 4d. <i>per</i> sheet; continuing and filing, 4d. each	-	-	0 0 0
	Rule to plead	-	-	0 2 6

Entering

Court of King's Bench.

369

	l.	s.	d.
Searching for plea, and demanding same in writing - - -	0	3	8
Drawing and ingrossing issue <i>per sheet</i> , besides duty - - -	0	0	4
Entering plea - - -	0	1	0
Entering proceedings on roll, <i>per sheet</i> -	0	6	4
Docquet - - -	0	1	0
Plaintiff's warrant of attorney - -	0	0	8
Notice of trial, and all other notices, copy and service each - -	0	2	0
Ingrossing record, <i>per sheet</i> - -	0	0	4
Attending to get same passed - -	0	3	4
<i>Venire facias</i> and fee - -	0	7	6
<i>Distringas</i> and fee - -	0	7	6
Returning <i>distringas</i> - -	0	2	0
Attending to take instructions for drawing brief - -	0	6	8
Drawing brief, each brief sheet -	0	6	8
Fair copy of brief each sheet - -	0	2	6
Attending to instruct counsel with brief, each counsel, court allows no more than two - - -	0	6	8
Term fees, each term - - -	0	5	0
<i>Subpœna</i> and fee, each <i>subpœna</i> -	0	7	6
Copies thereof, each copy - -	0	1	0
Service of each copy - - -	0	2	6
Attending to instruct witnesses - -	0	6	8
Attending court, while cause is in the paper, each day - - -	0	6	8
Attending court on trial - - -	0	13	4
Court allows for seeing counsel in a common jury cause - -	3	3	0
Drawing and ingrossing all affidavits, besides duty, <i>per sheet</i> - -	0	0	8
Attending to tax costs - - -	0	3	4
Attending summons, each summons -	0	3	4

If

		l.	s.	d.
For the de- fendant.	Warrant to defend	0	1	0
	Drawing and ingrossing common bail- piece, fee and duty	0	7	2
	Drawing and ingrossing special bail, fee and duty	0	6	5
	Attending court to justify	0	3	4
	Fair copy of declaration <i>per sheet</i>	0	0	2
	Drawing plea and fair copy of same, <i>per sheet</i>	0	1	0
	Ingrossing same for delivery, besides duty, <i>per sheet</i>	0	0	4
	If plea special, master allows what paid special pleader, and for attend- ing him	0	3	4
	Fair copy of issue <i>per sheet</i>	0	0	2
	Attending to take instructions for drawing brief	0	6	8
	Drawing brief, each brief sheet	0	6	8
	Fair copy of ditto, each sheet	0	2	6
	Attending to instruct counsel with brief, each counsel, court allows no more than two	0	6	8
	Term fee each term	0	5	0
	<i>Subpæna</i> and fee, each <i>subpæna</i>	0	7	6
	Copies thereof, each copy	0	1	0
	Attending to instruct witnesses	0	6	8
	Attending court while cause is in paper, each day	0	6	8
	Attending court on trial	0	13	4
	Drawing and ingrossing affidavits, be- sides duty	0	0	8
	Attending summons each time	0	3	4
	Attending to tax costs	0	3	4
	Letters and messages each term	0	1	0
Writes.	Drawing and ingrossing <i>habeas corpus</i> and fee	1	0	0
	Writ of possession with a <i>fi. fa.</i> for costs	0	15	10
	When without	0	12	0

For

Court of King's Bench.

371

		l.	s.	d.	
d.	Ca. fa.	-	-	-	0 9 0
0	Fi. fa.	-	-	-	0 9 0
	Test. ca. fa.	-	-	-	0 10 0
2	Test. fi. fa.	-	-	-	0 10 0
	Elegit	-	-	-	0 12 0
5	Sci. fa. per sheet	-	-	-	0 0 8
4					
2	For not declaring after appearance	1	13	0	Costs on non
	If action bailable, more	-	1	0	0 pres.
0	Costs on confession	-	3	3	0
4					
	On inquiry of ten sheets	-	8	10	0 Costs on
	For every sheet more	-	0	2	6 judgment by
4	If plaintiff enters appearance accord-				default.
2	ing to statute, additional expence	1	0	0	
8	Common costs where issue 12 sheets	14	10	0	Costs on
6	For every sheet more	-	0	2	6 trial.
2	Common costs for not confessing lease,				
	entry, and ouster	-	21	10	0

The expence of a witness attending on a trial, and what is paid him for same, will not be allowed in costs unless he was served with a *subpoena*, or was examined at the trial.

No maps are allowed for on trials in costs, when between party and party.

DIRECTIONS of WRITS to the several Cities, Towns corporate, and particular Jurisdictions throughout England.

To the mayor, bailiffs, and burgessees of the Abingdon.
borough of *Abingdon*, in the county of *Berks*,
and to every of them.

To the bailiffs, select men, and burgessees of *Andover*.
the borough of *Andover*, in the county of
Southampton, and to, &c.

1

To

- St. Albans.** To the mayor, aldermen, and burgesſes of the borough of *St. Albans*, in the county of *Herts*, and to every of them.
- Appleby.** To the mayor, aldermen, and capital burgesſes of the borough of *Appleby*, in the county of *Westmoreland*, and to every of them.
- Aldborough.** To the bailiffs of our town of *Aldborough*, in the county of *Suffolk*.
- Abendon.** To the mayor and bailiffs of the town of *Abendon*, and every of them.
- Abergavenny.** To the steward and bailiffs of Sir *Neville* Lord *Abergavenny*, of his town of *Abergavenny*, in the county of *Monmouth*.
- Advene.** To the mayor and bailiffs of our town of *Advene*, in the county of *Cornwall*, and to every of them.
- Alburges.** To the steward of our manor of *Alburges*, in the county of *York*, greeting.
- Allerton.** To the steward of the county of *Earl of Exeter*, held for his manor and liberty of *Allerton*, in the county of *Devon*.
- Aylesbury.** To the bailiffs of our town of *Aylesbury*, in the county of *Bucks*, and to each of them.
- Arundel.** To the mayor and burgesſes of our borough of *Arundel*, in the county of *Suffex*, and to every of them.
- Avendon.** To the mayor and bailiffs of our town of *Avendon*, in the county of *Southampton*, and to every of them.
- Axbridge.** To the mayor, aldermen, and burgesſes of the borough of *Axbridge*, in the county of *Salterſet*, and to every of them.
- Bedford.** To the mayor, aldermen, burgesſes, and recorder of our town of *Bedford*, in the county of *Bedford*, and to every of them.
- Berwick.** To the mayor, bailiffs, and burgesſes of the town of *Berwick on Tweed*.

Court of King's Bench.

373

To the mayor, aldermen, and burgesſes of the *Barnſtable*, borough or town of *Barnſtable*, in the county of *Devon*, and to, &c.

To the mayor and burgesſes of our borough of *Boston*, in the county of *Lincoln*, and to, &c.

To the bailiffs and burgesſes of our town of *Bridport*, *Bridport*, in the county of *Dorſet*, and to, &c.

To the bailiffs and burgesſes of our town of *Bewdly*, *Bewdly*, in the county of *Worceſter*, and to, &c.

To the mayor, aldermen, and recorder of our *Bath*, city of *Bath*, in the county of *Somerſet*, and to, &c.

To the mayor, aldermen, and burgesſes of our *Brackley*, town of *Brackley*, in the county of *Northampton*, and to, &c.

To the mayor, aldermen, and capital burgesſes *Banbury*, of the town of *Banbury*, in the county of *Oxford*, and to, &c.

To the mayor, aldermen, and burgesſes of our *Beverley*, town of *Beverley*, in the county of *York*, and to, &c.

To the mayor, aldermen, and ſheriffs of our *Bristol*, city of *Bristol*, and to, &c.

To the mayor, aldermen, and burgesſes of our *Brecon*, town of *Brecknock*, in the county of *Brecknock* in *South Wales*.

To the mayor, aldermen, and burgesſes of our *Bridgewater*, town of *Bridgewater*, in the county of *Somerſet*, and to, &c.

To the mayor and burgesſes of our borough of *Bodmyn*, *Bodmyn*, in the county of *Cornwall*, and to, &c.

To the mayor, aldermen, and burgesſes of our *Buckingham*, town of *Buckingham*, in the county of *Bucks*, and to, &c.

K k

To

- Bradnynch.** To the mayor and burgesſes of our town of *Bradnynch*, in the county of *Devon*, and to, &c.
- Bury St. Edmonds.** To the mayor, aldermen, and burgesſes of our town of *Bury St. Edmond's*, in the county of *Suffolk*, and to, &c.
- Idgenorth.** To the bailiffs and burgesſes of our town of *Bridgenorth*, in the county of *Salop*, and to, &c.
- Battell.** To the ſteward and bailiffs of Lord *Viscount Montague*, of his liberty of *Battell*, in the county of *Suffex*, and to, &c.
- Burton on Trent.** To the bailiffs and ſteward of Lord *Paget*, of his town of *Burton on Trent*, in the county of *Nottingham*, and to, &c.
- Bridewell.** To the mayor, commonalty, and citizens of our city of *London*, and alſo to the governors of the hoſpitals of *Bridewel* and *St. Thomas* the apoſtle, and to, &c.
- Biddeford.** To the mayor, aldermen, burgesſes, and recorder of our town of *Biddeford*, in the county of *Devon*, and to, &c.
- Brownſhall.** To the headborough of Lord of his manor of *Brownſhall*, in the county of *Northumberland*.
- Blandford Forum.** To the bailiff and conſtables of the town of *Blandford Forum*, in the county of *Dorſet*, and to, &c.
- Bletchingly.** To the bailiff and burgesſes of our borough of *Bletchingly*, in the county of *Surry*, and to, &c.
- Bromchard.** To the court of of *Bromchard* Without, in the county of
- Brighouſe.** To the court of of *Brighouſe*, in the county of
- Boroughbridge.** To the ſteward of our town of *Boroughbridge*, in the county of *York*.
- Barnſley cum Dodworth.** To the ſteward of the court of the manor of *Barnſley cum Dodworth*, in the county of *York*.

To the mayor and burgesſes of our borough of Bereaſton.
Bereaſton, in the county of Devon, and to,
&c.

To the portreeve, bailiff, and burgesſes of our Great Bed-
borough of Great Bedwyn, in the county of Wylts.
Wylts, and to, &c.

To the mayor and burgesſes of our town of Cambridge.
Cambridge, and to, &c.

To the mayor and commonalty of our city of Canterbury.
Canterbury, and to, &c.

To the mayor and bailiffs of our city of Carliſle.
liſle, in the county of Cumberland, and to,
&c.

To the ſheriffs of our city of Cheſter, greeting. Cheſter city.

To our chamberlain of our county palatine of County Pa-
Cheſter, or to his deputy there, greeting. latine of
Cheſter.

To the ſteward and burgesſes of our borough of Calne.
Calne, in the county of Wylts, and to, &c.

To the mayor and burgesſes of our borough of Camelford.
Camelford, in the county of Cornwall, and to,
&c.

To the mayor, aldermen, and burgesſes of our Colcheſter.
borough of Colcheſter, in the county of Eſſex,
and to, &c.

To the mayor, burgesſes, and commonalty of Carmarthen.
our borough of Carmarthen, in the county of
Carmarthen, and to, &c.

To the mayor, bailiffs, and commonalty of our Coventry.
city of Coventry, and to, &c.

To the bailiffs and burgesſes of our borough of Chippenham.
Chippenham, in the county of Wylts, and to,
&c.

To the mayor, aldermen, and commonalty of Chicheſter.
our city of Chicheſter, in the county of Suffex,
and to, &c.

To the mayor, bailiffs, and burgesſes of our Clifton Dart-
borough of Clifton Dartmouth and Hardneſs, in mouth,
the county of Devon, and to, &c. Hardneſs.

To the mayor and bailiffs of our town of Caerleon.
leon, in the county of Monmouth, and to, &c.

Cheltenham.

To the high steward, bailiffs, and suitors of our manor of *Cheltenham*, in the county of *Gloucester*, and also to the keeper of our prison there.

Castle-Rising.

To the mayor and burgessees of our town of *Castle-Rising*, in the county of *Norfolk*, and to, &c.

Cinque ports are Dover, Sandwich, Rumnor, Winchelsea, and Rye.

To the constable of our castle of *Dover*, or his deputy there, greeting.

Borough Court.

To the steward of the liberty of the mayor and commonalty and citizens of the city of *London*, of their town and borough of *Southwark*, and also to the bailiff of the said liberty, greeting.

Chipping Hampden.

To the bailiff and burgessees of our borough of *Chipping Hampden*, in the county of *Gloucester*, and to, &c.

Colfield-Sutton.

To the warden and society of our town of *Cotton-Colfield*, in the county of *Warwick*.

Cricklade.

To the bailiff and burgessees of our borough of *Cricklade*, in the county of *Wilts*, and to, &c.

Carisbrooke.

To constable of our castle of *Carisbrooke*, in the county of *Southampton*, or to his deputy there.

Clitherow.

To the bailiff and burgessees of our borough of *Clitherow*, in the county of *Lancaster*, and to, &c.

Chipping Norton.

To the bailiffs, steward, or town-clerk, or to his deputy of our borough of *Chipping Norton*, in the county of *Oxford*.

Chesthunt.

To the steward of the court of his manor of *Chesthunt*, in the county of *Herts*.

Christchurch.

To the mayor and burgessees of our borough of *Christchurch*, in the county of *Southampton*, and to, &c.

Chepstow.

To the steward and bailiffs of our town of *Chepstow*, in the county of *Monmouth*, and to, &c.

To

To the mayor and steward of *Corf Castle*, in *Corf Castle*.
the county of *Dorset*.

To the bailiff and burgeses of our town of *Bishop's*
Bishop's Castle, in the county of *Salop*, and to, *Castle*.
&c.

To the mayor, aldermen, and burgeses of *Doncaster*.
our borough of *Doncaster*, in the county of
York, and to, &c.

To the mayor, aldermen, and burgeses of our *Devizes*.
borough of the *Devizes*, in the county of
Wilts, and to, &c.

To the bailiffs, aldermen, and burgeses of our *Dunwich*.
borough of *Dunwich*, in the county of *Suf-*
folk, and to, &c.

To the mayor and burgeses of our borough *Derby*.
of *Derby*, in the county of *Derby*, and to,
&c.

To the Reverend Father in Christ, by Divine *County Pa-*
Providence *Bishop of Durham*, or *latine of*
to his deputy there. *Durham*.

To the bailiffs, burgeses, and recorder of our *Denbigh*.
borough of *Denbigh*, greeting, and to,
&c.

To the mayor, bailiffs, and burgeses of the *Dartmouth*.
borough of *Clifton Dartmouth Hardness*, in
the county of *Devon*.

To the constable and burgeses of our borough *Downton*.
of *Downton*, in the county of *Wilts*, and to,
&c.

To the mayor and recorder of our borough of *Dorchester*.
Dorchester, in the county of *Dorset*, and to,
&c.

To the bailiffs and burgeses of our borough of *Droitwich*.
Droitwich, in the county of *Worcester*, and
to, &c.

To the bailiffs, burgeses, and commonalty of *Daventry*.
our borough of *Daventry*, in the county of
Northampton, and to, &c.

- East Redford.** To the mayor, aldermen, and burgesſes of our town of *East Redford*, in the county of *Nottingham*, and to, &c.
- Eastloe.** To the mayor and burgesſes of our borough of *Eastloe*, in the county of *Cornwall*, and to, &c.
- Evesham.** To the mayor, aldermen, and burgesſes of our borough of *Evesham*, in the county of *Worcester*, and to, &c.
- Exeter.** To the mayor, bailiffs, and commonalty of our city of *Exeter*, in the county of *Devon*, and to, &c.
- Eye.** To the bailiffs of our town of *Eye*, in the county of *Suffolk*, and to &c.
- East Grinstead.** To the bailiff and burgesſes of our borough of *East Grinstead*, in the county of *Suffex*, and to &c.
- Faversham.** To the mayor, jurats, and commonalty of the town of *Faversham*, in the county of *Kent*, and to, &c.
- Fowey.** To the mayor and burgesſes of our borough of *Fowey*, in the county of *Cornwall*, and to, &c.
- Fleet.** To the warden of our priſon of the *Fleet*, greeting.
- Farnham.** To the bailiffs of our borough of *Farnham*, in the county of *Surry*, and to, &c.
- Guildford.** To the mayor and burgesſes of our town of *Guildford*, in the county of *Surry*, and to, &c.
- Gram-pound.** To the mayor and burgesſes of our borough of *Gram-pound*, in the county of *Cornwall*, and to, &c.
- Godmancheſter.** To the bailiffs, aſſiſtants, and commonalty of the borough of *Gumeceſter*, alias *Godmancheſter*, in the county of *Huntingdon*.
- Glouceſter.** To the mayor, aldermen, and ſheriffs of our city of *Glouceſter*, and to, &c.

- To the mayor, aldermen, and burgesſes of our Grantham.
town of *Grantham*, in the county of *Lincoln*,
and to, &c.
- To the provost, jurats, and principal inhabi- Gravesend
tants of the towns and pariſhes of *Gravesend* and *Milton*,
and *Milton*, in the county of *Kent*, and to,
&c.
- To the ſteward of our court of *Gillingham*, in *Gillingham*,
the hundred of *Gillingham*, in the county of
Dorſet, or to his deputy there.
- To the ſteward of our court of the liberty of *Glaſtonbu-*
Glaſtonbury, in the county of *Somerſet*. ry.
- To the mayor and burgesſes of our town of *Grimſby*.
Great Grimſby, in the county of *Lincoln*,
and to, &c.
- To the burgesſes of our borough of *Gatton*, in *Gatton*,
the county of *Surry*, and to, &c.
- To the mayor and burgesſes of our borough of *Harwich*.
Harwich, in the county of *Effex*, and to,
&c.
- To the mayor, aldermen, ſheriffs, and com- Hereford.
monalty of our city of *Hereford*.
- To the mayor, aldermen, bailiffs, and bur- Hedon.
gesſes of the town of *Hedon*, in the county of
York.
- To the mayor, aldermen, and commonalty of *Helleſton*.
our borough of *Helleſton*, in the county of
Cornwall, and to, &c.
- To the mayor, aldermen, and burgesſes of our *Higham-*
borough of *Higham Ferrers*, in the county of *Ferrers*.
Northampton, and to, &c.
- To the mayor, aldermen, burgesſes, and com- Honiton.
monalty of the borough of *Honiton*, in the
county of *Devon*.
- To the mayor, aldermen, and burgesſes of the *Hunting-*
borough of *Huntingdon*, in the county of *Hun-* don.
tingdon.
- To the ſteward and ſuitors of the court of our *Haver-*
manor of *Havering atte Bower*, in the coun- *atte Bower*.
ty of *Effex*.

To

- Henley on Thames. To the bailiffs, bridge-keepers, burgesses, and commonalty of our town of *Henley on Thames*, in the county of *Oxford*, and to, &c.
 Hertford. To the mayor and capital burgesses of our borough of *Hertford*, in the county of *Hertford*, and to, &c.
 Hexham. To the steward of our court of *Hexham*, in the county of *Westmorland*.
 Hartpoole. To the mayor and burgesses of our borough of *Hartpoole*, within the bishoprick of *Durham*.
 Heydon in Holderness. To the mayor and bailiffs of our town of *Heydon in Holderness*, in the county of *York*.
 Hatfield. To the steward of our court of our manor of *Hatfield*, in the county of *Hertford*.
 Haslemere. To the bailiff and burgesses of our borough of *Haslemere*, in the county of *Surry*, and to, &c.
 Horsham. To the mayor and burgesses of our borough of *Horsham*, in the county of *Sussex*.
 Heytesbury. To the mayor and burgesses of our borough of *Heytesbury*, in the county of *Wilts*.
 Ipswich. To the bailiffs, burgesses, and commonalty of our town of *Ipswich*, in the county of *Sussex*.
 St. Ives. To the mayor and burgesses of our borough of *St. Ives*, in the county of *Cornwall*.
 St. John of Beverley. To the steward of the court of pleas of *St. John of Beverley*, in the county of *York*.
 St. Jermyns. To the portreeve and steward of our borough of *St. Jermyns*, in the county of *Cornwall*.
 Kingston upon Hull. To the mayor, sheriff, and burgesses of our town of *Kingston upon Hull*, in the county of *York*.
 Kendall. To the mayor, aldermen, and burgesses of our borough of *Kirkby Kendall*, in the county of *Westmorland*.
 Kellington alias Calington. To the mayor, aldermen, and freemen of the borough of *Kellington*, in the county of *Cornwall*.

Court of King's Bench.

381

To the bailiffs, recorder, and steward of our court of *Kingston on Thames*, in the county of *Surry*. Kingston on Thames.

To the steward, master, or keeper of the hospital or free chapel of *St. Katherine's*, near the *Tower, London*, or to his deputy. St. Katherine's.

To the steward, bailiff, and suitors of the court of our manor of *King's Norton*, in the county of *Worcester*, and to, &c. King's Norton.

To the steward of our court of the honour of *Knareborough*, in the county of *York*. Knareborough.

To our chancellor of our county palatine of *Lancaster*, or to his deputy there, greeting. County Palatine of Lancaster.

To the mayor, aldermen, and burgesses of the borough of *Lestwithiel*, in the county of *Cornwall*. Lestwithiel.

To the mayor, aldermen, recorder, and burgesses of the borough of *Donbevid*, alias *Launceston*, in the county of *Cornwall*. Launceston.

To the bailiffs and burgesses of the borough of *Leominster*, in the county of *Hereford*. Leominster.

To the mayor and burgesses of the borough of *Liskard*, in the county of *Cornwall*. Liskard.

To the mayor, aldermen, and burgesses of the borough of *Leeds*, in the county of *York*. Leeds.

To the mayor, aldermen, and bailiffs of the borough of *Leicester*, in the county of *Leicester*. Leicester.

To the bailiffs, burgesses, and commonalty of our borough of *Ludlow*, in the county of *Salop*. Ludlow.

To the mayor, sheriffs, and commonalty of the city of *Lincoln*. Lincoln.

To the mayor and aldermen of our city of *Litchfield*, in the county of *Stafford*, and to, &c. Litchfield.

To the mayor and burgesses of our borough of *Lyme-Regis*, in the county of *Dorset*. Lyme-Regis.

To the mayor and recorder of our town of *Lynn-Regis*, in the county of *Norfolk*, greeting. Lynn-Regis.

To the mayor of *Bishop's Lynn*. Bishop's Lynn.

To

- Lydford.** To the mayor and burgesses of our borough of *Lydford*.
- Ledbury.** To our bailiff of the borough of *Ledbury*, in the county of *Hereford*, and also to the judges of the court of the said borough.
- Lewes.** To the constable and burgesses of our borough of *Lewes*, in the county of *Sussex*.
- Liverpool.** To the mayor and aldermen of our town of *Liverpool*, in the county of *Lancaster*.
- Ludgershall.** To the sheriff and burgesses of our borough of *Ludgershall*, in the county of *Wilts*.
- Lymington.** To the mayor and burgesses of our borough of *Lymington*, in the county of *Southampton*.
- Maidenhead.** To the mayor, bridge-masters, and burgesses of the town of *Maidenhead*, in the county of *Berks*, greeting.
- Macclesfield.** To the mayor, aldermen, and burgesses of the borough of *Macclesfield*, in the county palatine of *Chester*.
- Maidstone.** To the mayor and aldermen of the royal town and parish of *Maidstone*, in the county of *Kent*.
- Malmesbury.** To the mayor, aldermen, and burgesses of the borough of *Malmesbury*, in the county of *Wilts*.
- Mitchell.** To the mayor, recorder, and burgesses of the borough of *Mitchell*, in the county of *Cornwall*.
- Maldon.** To the bailiffs and burgesses of our town of *Maldon*, in the county of *Essex*.
- Weymouth and Melcomb-Regis.** To the mayor, aldermen, bailiffs, burgesses, and commonalty of the town of *Weymouth* and *Melcomb-Regis*.
- Minehead.** To the portreeve and burgesses of the borough of *Minehead*, in the county of *Somerset*.
- Monmouth.** To the mayor and bailiffs of our town of *Monmouth*.
- Marshall's Court.** To the judges of our court of our palace of *Westminster*, and to each of them, greeting.
- To

To the steward of the court of our marshal of our household, and to our marshal of our household, and also to the judges of the court of the verge of our household, and to every of them. Marshal of the Household, vulgarly called the Board of Green cloth.

To the steward of the dean and chapter of the collegiate church of *St. Peter at Westminster*, of its liberty or precinct of *St. Martin le Grand, London*, and also to the conitables thereof. St. Martin Le Grand.

To the mayor and burgeses of the borough and town of *Merleberge*, greeting.

To the steward and bailiff of the honour of *Mandeville*. Mandeville.

To the bailiff and burgeses of our borough of *Midhurst*, in the county of *Sussex*.

To the bailiffs and burgeses of our borough of *Morpeth*, in the county of *Northumberland*. Morpeth.

To the mayor and burgeses of our town of *St. Mary's*, in the county of *Cornwall*, greeting. St. Mary's.

To the provost, aldermen, and burgeses of the borough of *Neath*, in the county of *Glamorgan*. Neath.

To the mayor, aldermen, and capital burgeses of the borough of *Newport*, in the isle of *Wight*. Newport.

To the mayor, bailiffs, and burgeses of the town of *Northampton*, in the county of *Northampton*. Northampton.

To the keeper of our prison of *Newgate*, London. Newgate.

To the mayor and aldermen of the town of *Newark*, *Newark upon Trent*, in the county of *Nottingham*. Newark.

To the mayor, aldermen, sheriffs, and commonalty of the city of *Norwich*. Norwich.

To the mayor, aldermen, sheriffs, and burgeses of the town of *Nottingham*, in the county of the said city. Nottingham.

To

- Newbury.** To the mayor, aldermen, and burgesſes of the borough of *Newbury*, in the county of *Berks*.
- Newcastle under Line.** To the mayor, aldermen, and burgesſes of our borough of *Newcastle under the Line*, in the county of *Stafford*, and to, &c.
- Newcastle on Tyne.** To the mayor, aldermen, and burgesſes of our town of *Newcastle upon Tyne*, in the county of *Northumberland*, and to, &c.
- Newton.** To the bailiff and burgesſes of our borough of *Newton*, in the county of *Lancaster*.
- Okehampton.** To the mayor and burgesſes of the town and borough of *Okehampton*, in the county of *Devon*.
- Orford.** To the mayor and commonalty of the borough of *Orford*, in the county of *Suffolk*.
- Oxford.** To the mayor, bailiffs, and commonalty of the city of *Oxford*, in the county of *Oxford*.
- Oswestry.** To the bailiffs and burgesſes of the town of *Oswestry*, in the county of *Salop*.
- Penryn.** To the mayor and burgesſes of the borough of *Penryn*, in the county of *Cornwall*.
- Plymouth.** To the mayor and commonalty of the borough of *Plymouth*, in the county of *Devon*.
- Portsmouth.** To the mayor, aldermen, and burgesſes of the borough of *Portsmouth*, in the county of *Southampton*.
- Plympton.** To the mayor, bailiff, and burgesſes of the borough of *Plympton*, in the county of *Devon*.
- Pontefract.** To the mayor, aldermen, and burgesſes of the borough of *Pontefract*, in the county of *York*.
- Preston.** To the mayor, bailiffs, and burgesſes of the borough of *Preston*, in the county of *Lancaster*.
- Poole.** To the mayor of the town of *Poole*, and ſenior bailiff of the ſaid town, in the county of *Dorset*.
- Peterborough.** To the ſteward of the court of the dean and chapter of the cathedral church of *Peterborough*,

rough, and the burgesſes of the ſaid city, and to every of them.

To the bailiff of the liberty of our dutchy of *Pevenſey*, *Lancaſter*, within the rape of *Pevenſey*, in the county of *Suffex*.

To the ſteward and bailiff of the hundred and *Penwith*, its liberty of *Penwith*, in the county of *Cornwall*.

To the court of our manor of *Portland*, in the *Portland* county of *Dorſet*.

To the mayor and burgesſes of our borough of *Paſtſtowe* *Paſtſtowe*, alias *Petrockſtowe*, in the county of *Cornwall*.

To the mayor and commonalty of our borough *Petersfield*, of *Petersfield*, in the county of *Southampton*.

To the bailiff and ſuitors of our court of *Pickering* *Pickering*.

To the mayor and burgesſes of our borough of *Queenborough*, in the county of *Kent*.

To the mayor, aldermen, and burgesſes of the *Richmond* borough of *Richmond*, in the county of *York*.

To the mayor, aldermen, and burgesſes of the *Reading* borough of *Reading*, in the county of *Berks*.

To the ſteward and bailiff of the manor court of *Ryalton*, *Ryalton*, in the county of *Cornwall*.

To the mayor, aldermen, and commonalty of *Rocheſter*, our city of *Rocheſter*, in the county of *Kent*.

To the ſteward of the Reverend Father in Chriſt *Rocheſter* *Bishop of Rocheſter*, of his palace *Palace* court of *Rocheſter*.

To the ſteward and bailiffs of the liberty of the *Rippon* canon court, late of the canons and chapter of the collegiate church of *Rippon*, in the county of *York*.

To the bailiff and burgesſes of our borough of *Ryegate*, *Ryegate*, in the county of *Surry*.

To the mayor and free burgesſes of the borough *Saltaſh*, of *Saltaſh*, in the county of *Cornwall*.

- Scarborough.** To the mayor, aldermen, and burgeses of the borough of *Scarborough*, in the county of *York*.
- Salisbury.** To the mayor and commonalty of the city of *New Sarum*, in the county of *Wilts*.
- Shrewsbury.** To the mayor, aldermen, and burgeses of the town of *Shrewsbury*, in the county of *Salop*.
- Shaftesbury.** To the mayor, burgeses, and recorder of the borough of *Shafton*, alias *Shaftesbury*, in the county of *Dorset*.
- Swanley.** To the mayor, aldermen, and burgeses of the borough of *Swansey*, in the county of *Glamorgan*.
- Southwold.** To the bailiffs and commonalty of the town of *Southwold*, in the county of *Suffolk*.
- Southmoulton.** To the mayor and capital burgeses of the borough of *Southmoulton*, in the county of *Devon*.
- Stafford.** To the mayor, bailiffs, and burgeses of the borough of *Stafford*, in the county of *Stafford*.
- Stamford.** To the mayor, aldermen, and capital burgeses of the town of *Stamford*, in the county of *Lincoln*.
- Sudbury.** To the mayor, aldermen, and burgeses of the borough of *Sudbury*, in the county of *Suffolk*.
- Savoy.** To the bailiff of the liberty of our dutchy of *Lancaster* in the *Strand*, in our county of *Middlesex*.
- New Sarum City.** To the bailiff of the liberty of the Bishop of *Salisbury*, of the city of *New Sarum*, in the county of *Wilts*.
- Manor of Southwark.** To the steward of the court of the liberty of the Reverend Father in Christ Bishop of *Winchester*, of his manor of *Southwark*, in the county of *Surry*.
- Southampton.** To the mayor and bailiffs of the town of *Southampton*.

To the steward of the court of the hundred of Sherborne.
Sherborne, in the county of *Dorset*.

To *Delme Vanbeythuysen*, Esq; steward of his Majesty's court of record, held within the manors of *Stepney* and *Hackney*, in the county of *Middlesex*, the hamlets and liberties of the same, and also to the prothonotary of the same court.

Stebon
Heath, alias
Stepney.

To the bailiff and burgeses of our borough of *Stockbridge*,
Stockbridge, in the county of *Southampton*.

To the constable and burgeses of our borough of *Staining*,
of *Staining*, in the county of *Suffex*.

To the constable and burgeses of our borough of *Shoreham*,
of *Shoreham*, in the county of *Suffex*.

To the mayor, aldermen, and commonalty of *Tavistock*,
the borough of *Tavistock*, in the county of *Devon*.

To the mayor and recorder of our borough of *Thetford*,
Thetford, in, &c.

To the mayor and burgeses of the town and *Tiverton*,
parish of *Tiverton*, in the county of *Devon*.

To the mayor, aldermen, and burgeses of the *Torrington*,
borough and port of *Torrington Magna*, in the
county of *Devon*.

To the mayor and burgeses of the borough of *Tintagell*,
Tintagell, in the county of *Cornwall*.

To the mayor and burgeses of the borough of *Totnes*,
Totnes, in the county of *Devon*.

To the mayor and burgeses of the borough of *Truro*,
Truro, in the county of *Cornwall*.

To the mayor, aldermen, and commonalty of
the borough of *Tewkesbury*, in the county of
Gloucester.

Tower of
London.

To the constable, or his lieutenant, or deputies,
of our *Tower of London*, as also to the steward
of the same, and to, &c.

To the mayor, bailiffs, and commonalty of the
borough of *Thackstead*, in the county of *Essex*, and to, &c.

Thackstead.

To the bailiff of the *Tolbooth* of the town of *Tolbooth*,
Bishop's-Lynn.

- Taunton.** To the bailiff of the Reverend Father in Christ,
Bishop of *Winchester*, of his liberty
of *Taunton* and *Taunton Dean*, in the county
of *Somerset*.
- Tamworth.** To the bailiffs of our town of *Tamworth*.
- Thermalton.** To our high steward of
our dutchy of *Cornwall*, and of the fief and
manor of *Thermalton*, or his deputy there.
- Trevenna.** To the mayor and burgesses of our borough of
Trevenna, alias *Bisshney*, in the county of
Cornwall.
- Trellock.** To the mayor and bailiffs of of
the town of *Trellock*, in the county of *Corn-*
wall.
- Tregony.** To the court of of *Tregony*, in the
county of *Cornwall*.
- Tickhill.** To the steward of the court of our honour of
Tickhill, in the county of *York*.
- Uke.** To the portreeve and bailiffs of the town of
Uke, in the county of *Monmouth*.
- Walling-** To the mayor, aldermen, and burgesses of the
fordy borough of *Wallingford*, in the county of
Berks.
- Walden.** To the mayor and aldermen of the town of
Saffron Walden, in the county of *Essex*.
- Warwick.** To the mayor, aldermen, and burgesses of the
borough of *Warwick*, in the county of *War-*
wick.
- Wigan.** To the mayor, bailiffs, and burgesses of the
borough of *Wigan*, in the county of *Lan-*
caster.
- West-Loo.** To the mayor and burgesses of the borough of
West Loo, in the county of *Cornwall*.
- Wilton.** To the mayor and burgesses of the borough of
Wilton, in the county of *Wilts*.
- Worcester.** To the mayor, aldermen, and burgesses of our
city of *Worcester*.
- Wells.** To the mayor, aldermen, and burgesses of the
city of *Wells*.

- To the bailiffs and burgesſes of the borough of Wycomb.
Chipping Wycomb, in the county of *Bucks*.
- To the mayor, aldermen, and burgesſes of the Wootton-
borough of *Wootton-Baſſet*, in the county of Baſſet.
Wilts.
- To the mayor, bailiffs, and burgesſes of the Windſor.
borough of *New Windſor*, in the county of
Berks.
- To the high bailiff of the liberty of the dean and Westmin-
chapter of the collegiate church of *St. Peter*, ſter.
Westminſter.
- To the bailiff and ſteward of the town and li- Wenlock.
berty of *Wenlock Magna*.
- To the ſteward and bailiffs of of Wye.
his manor of *Wye*, in the county of *Kent*, and
to every of them.
- To conſtable of our honour and Windſor
caſtle of *Windſor*, and keeper of our ſaid caſtle.
foreſt, or to his lieutenant, or deputy there.
- To the mayor, recorder, or his deputy, and Wincheſter:
the bailiffs of our city of *Wincheſter*, and to
every of them.
- To the mayor of our town of *New Woodſtock*, Woodſtock.
in the county of *Oxford*.
- To the mayor, aldermen, and ſheriff of our Worcester,
city of *Worceſter*.
- To the ſteward or bailiff of the town or borough Wigmore.
of *Wigmore*.
- To the ſteward of our court of our manor of Wyke-Re-
Wyke-Regis. gis.
- To the mayor and commonalty of our borough Whit-
of *Whitchurch*, in the county of *Southamp- church*.
ton.
- To the mayor and burgesſes of our borough Weſtbury.
Weſtbury, in the county of *Wilts*.
- To the mayor, aldermen, and commonalty of Yarmouth.
the borough of *Great Yarmouth*, in the coun-
ty of *Norfolk*.

The Modern Practice of the

Yeovil.

To the portreeve and burgeses of our town of
Yeovil, in the county of Somerset.

ork.

To the mayor, aldermen, sheriffs, and com-
monalty of the city of York.

Cities and Towns having Sheriffs.

Cities.	{	Bristol,	- - -	two.	} Sheriffs.
		Canterbury,	- - -	one.	
		Coventry,	- - -	two.	
		Exeter,	- - -	two.	
		Gloucester,	- - -	two.	
		Litchfield,	- - -	one.	
		Lincoln,	- - -	two.	
		London,	- - -	two.	
		Norwich,	- - -	two.	
		Worcester,	- - -	one.	
		York,	- - -	two.	

Towns.	{	Kingston upon Hull,	- - -	one.	} Sheriffs.
		Nottingham,	- - -	two.	
		Newcastle upon Tyne,	- - -	one.	
		Pool,	- - -	one.	
		Southampton,	- - -	one.	

A P P E N D I X.

In the K. B.

A. B.
against
C. D.

E. F. of, &c. clerk to Mr. R. R. attorney for the defendant in this cause, maketh oath, That he, this deponent, did on *Tuesday*, the 5th day of this instant *June*, serve a copy of the notice hereunto annexed on Mr. P. P. who acts, as this deponent is informed, and believes, as attorney or agent for the plaintiff in this cause, by delivering a true copy thereof to the servant maid of the said Mr. P. P. at his house in *Gray's Inn Lane*.

Affidavit of
service of
notice, and
of justifying
bail.*E. F.**Sworn, &c.*

In the K. B.

A. B. plaintiff,
and*C. D.* defendant.

A. B. of, &c. ironmonger, the plaintiff in this cause, maketh oath, That he, this deponent, having casually lost divers goods and chattels, (*if the goods lost are small in number, you may mention them particularly*), being his property, of the value of 50 l. the said defendant *C. D.* afterwards became, and now is possessed of the said goods and chattels which he hath converted and disposed of to his own use, as this deponent hath been informed, and verily believes.

Affidavit in
trover to
hold defend-
ant to bail.*A. B.**Sworn, &c.*

In

In the *K. B.**A. B.* plaintiff,
against
C. D. defendant.Affidavit to
ground at-
tachment
against she-
riff for not
returning
writ, or
bringing in
the body.

E. F. of, &c. clerk to Mr. *R. R.* attorney
for the plaintiff in this cause, maketh oath,
That he, this deponent, on the day of
June last, served the rule to return the bill of
Middlesex alias, &c. hereunto annexed, by de-
livering a true copy thereof unto Mr. *Benson*,
(*who acts as or for the under-sheriff of the county of*
Middlesex) and at the same time shewed him
the said annexed rule: And this deponent fur-
ther saith, That on the day of
last, he this deponent searched at the King's
Bench office, with the proper officer there, for
the return of the bill of *Middlesex alias*, &c.
issued in this cause, in the said rule mentioned,
and thereupon found that the same was not
filed: And this deponent further saith, That on
the day of he this deponent
served the said Mr. *Benson* with a true copy of
the rule to bring in the body of the said defen-
dant in this cause hereunto annexed, and hath
since duly searched the several special bail-
books of the Right Honourable the Lord Chief
Justice, and the other three judges of this ho-
nourable court, and thereupon found that no
special bail was put in, or had justified them-
selves in this cause.

E. F.

Sworn, &c.

In the *K. B.**A. B.* plaintiff,
against
C. D. defendant.Affidavit to
obtain order
where plain-
tiff's attor-
ney doth not
attend sum-
mons.

E. F. of, &c. clerk to Mr. *P. P.* attorney for
the defendant in this cause, maketh oath, That
he, this deponent, on the 13th, 14th, and 15th
days of this instant *June*, severally served the
three several summonses hereunto annexed, by
severally

severally delivering true copies thereof unto Mr. R. R. the attorney for the plaintiff in this cause, and at the same time shewing him the said three annexed summonses: And this deponent further saith, That on the three several days and times therein mentioned, he hath accordingly duly attended thereon, but that the said Mr. R. R. or his agent, did not on either of the said three several days or times aforesaid, attend thereon.

E. F.

Sworn, &c.

In the K. B.

A. B. plaintiff,
against

C. D. defendant.

E. F. of, &c. clerk to Mr. R. R. attorney for the plaintiff in this cause, maketh oath, ^{Affidavit to} That Mr. P. P. attorney for the defendant in ^{oppose one} this cause, having served this deponent's master ^{of the bail} with notice of justifying bail in this cause, he ^{for disability.} this deponent by the order and directions of his said master, inquired into the sufficiency of the bail intended to be justified for the said defendant, and saith that J. K. one of the said bail, hath been a bankrupt within these twelve-months last past, and hath not yet obtained his certificate, as this deponent hath been informed, and verily believes (*or as case may be*).

By this rule, It is ordered by the court, that Rule, Trin. after the last day of *Trinity Term*, every rule Term, 6 to be made for the sheriff of the county of *Mid-* Geo. 3. *dlesex*, and the sheriffs of *London*, to return writs, or bring in the body or bodies of defendant or defendants, will be made for such sheriff or sheriffs to return such writs, and bring in the bodies of such defendants, within four days next after service thereof.

By

Rule, Hil.
Term, 8
Geo. 3.

By this rule, All attornies of this court, residing in *London* or *Westminster*, or within ten miles of the same, are to enter their names and places of abode, in a book kept by the master for that purpose, for public inspection, without fee or reward.

General
Rule, East.
8 Geo. 3.

By this rule, It is ordered, That when any prisoner surrenders, or is surrendered to the custody of the Marshal, in discharge of his or her bail under the commitment, shall be added in what state the cause or causes stand at the time of such surrender; if before declaration, the sum sworn to on the arrest. If a declaration hath been filed or delivered to the sum sworn, shall be also added, declaration filed or delivered. Issue joined, or interlocutory judgment signed, as the case is; if after final judgment in debt, the debt and damages; in other cases the *quantum* of the damages.

F I N I S.

E. G. M. B.